

**Murray Lower Darling Rivers  
Indigenous Nations**



**The Murray Lower Darling Rivers Indigenous Nations  
Submission to the Senate Rural and Regional Affairs and  
Transport Standing Committee**

***Water Amendment Bill 2008***

**7 November 2008**

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## Introduction

This submission is made by the confederation of Traditional Owners in the southern Murray Darling Basin called the Murray Lower Darling River Indigenous Nations (MLDRIN). The confederation is comprised of the Wiradjuri, Taungurung, Yorta Yorta, Wamba Wamba, Barapa Barapa, Wadi Wadi, Mutti Mutti, Wergaia, Latje Latje and Ngarrindjeri peoples.

MLDRIN acknowledges and supports submissions to this inquiry from the *Australian Human Rights Commission*, *The Australian Conservation Foundation*, *NSW Environmental Defenders Office*, *Friends of the Earth* and the *National Parks Association of NSW*, which deal with Indigenous issues as well as broader conservation agendas. This submission will deal primarily with Indigenous issues.

MLDRIN acknowledges the *Human Rights Commission* and the *NSW Environmental Defenders Office* for their assistance in the preparation of this submission.

As part of this submission we have attached relevant documents: *Indigenous Response to The Living Murray Initiative*, *Indigenous Rights to Water in the Murray Darling Basin* and the Memorandum of Understanding between MLDRIN and the Murray Darling Basin Commission.

It should be noted that within this submission we refer to the *Water Act 2007*, the *Water Amendment Bill 2008* and the *Act* and state that all the recommendations be applied to therein.

Furthermore, please also note that the terms “cultural water” and cultural flows are used interchangeably and mean the same thing as defined on page 9.

Thank you for the opportunity to be involved in the Senate Rural and Regional Affairs and Transport Standing Committee inquiry into the *Water Amendment Bill 2008*.

Yours sincerely



Matthew Rigney  
MLDRIN Chairman

## **Background**

### ***Indigenous Peoples of the Murray***

There are some 40 autonomous Indigenous Nations and approximately 70,000 Indigenous peoples within the Murray Darling Basin all of whom maintain an ongoing connection to Country and have responsibility to Country based on their laws and customs.

### ***Socio-economic context***

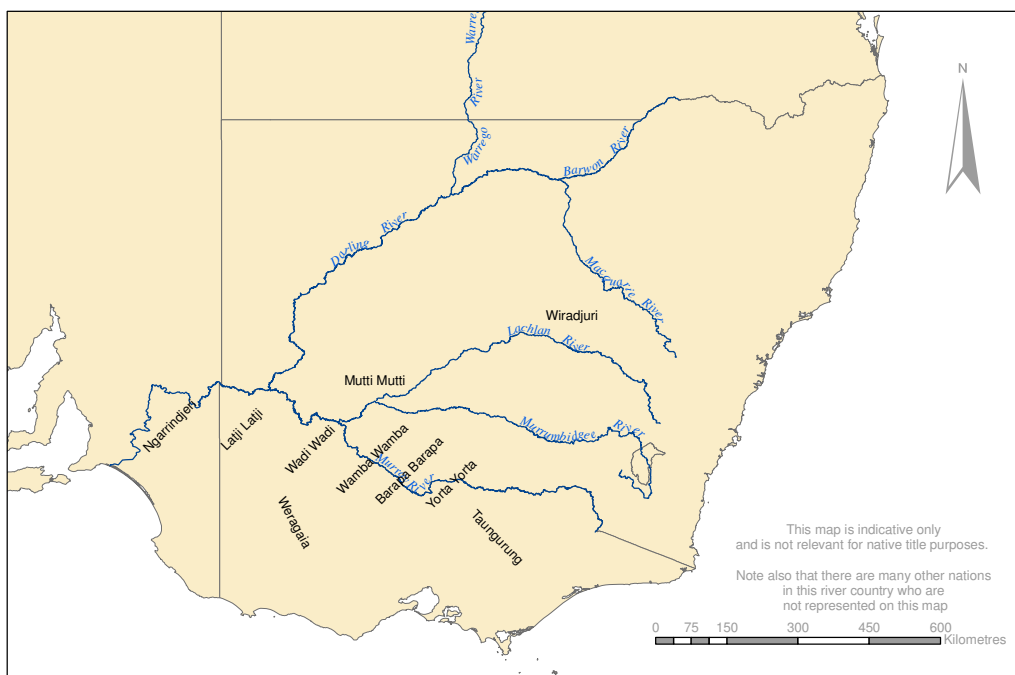
It is often cited that within Australia, the percentage of land in the Indigenous estate is around 20%. However within the Murray Darling Basin Indigenous peoples currently hold less than 0.2% of land, despite comprising approximately 4% of the Basin's population, and despite land reforms such as the *NSW Aboriginal Land Rights Act 1983* and *Native Title Act 1993*. The adverse disadvantage endured by all Indigenous peoples is compounded by the lack of access to Country and by the associated economic base it could provide.

### ***Murray Lower Darling Rivers Indigenous Nations***

The Murray Lower Darling Rivers Indigenous Nations is a confederacy of Indigenous Nations or traditional owners in the Lower Murray Darling Basin who come together to make collective decisions on our rivers in a respectful and holistic manner. The Confederate Indigenous Nations are:

Wiradjuri	Wadi Wadi
Taungurung	Mutti Mutti
Yorta Yorta	Latji Latji
Wamba Wamba	Wergaia
Barapa Barapa	Ngarrindjeri

Each of these Indigenous Nations have responsibilities unique to their territory in the Murray and Darling River valleys and are recognised under traditional laws and customs as having a spiritual, cultural and physical connection and responsibility for caring for homelands within their traditional boundaries. The map below is indicative of the Indigenous Nations (source J. Weir 2006)



### ***MLDRIN's Vision***

The River Murray must be:

- Healthy, clean and alive;
- Restocked and revegetated;
- Free flowing with natural cycles;
- Access rights for Indigenous people so they can move freely to continue cultural practice;
- Traditional fishing/hunting;
- Indigenous people and Nations recognised and respected for what and who we are;
- The rivers and tributaries are respected and cared for; and
- Indigenous Nation recognised as sovereign entities in their own country.

In the *Indigenous Responses to The Living Murray Initiative*, Indigenous peoples clearly identified concerns about the lack of respect not only for themselves, but also for the natural resources of the country.

The river system must be treated with respect, as it is the lifeblood of the country. If the river is in poor health, it can not provide spiritual, cultural, economic and social benefits to all those who depend on it.

The basis of management of the river system must be a whole landscape approach, including all tributaries of the River Murray. The objective for management of the river's resources must be sustainable use with the core values of the river system preserved as a legacy for future generations.

To fully respect the river and all adjoining systems, the mouth of the River Murray should be open. This can only occur if the needs of the river are respected - it effectively means increasing natural flows, bringing back native fauna and flora and eradicating introduced species such as carp and willow trees.

### ***MLDRIN's Principles***

- Our core principle is that only traditional owners are best placed to talk for Country.
- The Sovereignty and inherent rights of traditional owners are never ceded.
- MLDRIN will not interfere with the internal governance of individual Indigenous Nations.
- All Indigenous Nations are equal within the MLDRIN Confederacy.
- MLDRIN respects the diversity of Nations in relation to tradition, sites, stories, cultural practices and governance.
- Resources of the Confederation will be shared equally.
- Self-determination of the Nations and of MLDRIN is the only sustainable way to do business.
- Informed consent.

### ***MLDRIN's Values***

- Traditional lore and customs of the respective Indigenous Nations are paramount.
- The land and water are sacred, as is our knowledge of it.
- The River system must be treated with respect because the land, waters and the people are interconnected.
- Caring for Country must be sustainable and respectful.
- Caring for Country means talking to each other, upstream and downstream.
- The role of Elders is held in the highest esteem and respect.
- Young people must be respected and involved in the Care for Country.

## **Cultural Water**

### ***Cultural Context***

Indigenous Nations are and have been since time immemorial connected and responsible for their lands and waters, and the peoples of each Indigenous Nation obtain and maintain their spiritual and cultural identity, life and livelihood from their lands and waters.

In addition, Indigenous Nations each have responsibilities and obligations under their Indigenous Law/Lore and Custom to protect, conserve and maintain the environment and the ecosystems in their natural state to ensure the sustainability of the whole environment.

In November 2007, Indigenous peoples from the Nations represented within MLDRIN met in Echuca to come to an agreement on a definition of “cultural flows” and to discuss its impacts and benefits.

The right to water and access to water is supposed to be provided by the National Water Initiative and other Commonwealth and State mechanism but many of these are contingent upon positive Native Title determinations. Given the current disparity of Indigenous land tenure within the Murray Darling Basin access to water for Indigenous peoples is also severely limited and restricted.

Part of this issue is the fact that Cultural Water have not been on the political agenda in Australia, nor within discussions around natural resource management. The table “Cultural Flows Timeline 2008” (below) illustrates this point by comparing the policy dialogue and implementation of environmental flows and cultural flows (source Neil Ward, TLM IPP, 2007)

## Cultural Flows Timeline

Timeline	Environmental Flows	Cultural Flows
Pre-1970	Not considered	Not considered
1970's	<b>On 'radar'</b> ·Increasing awareness of water quality and salinity	
1980's	problemsMurray-Darling Basin MC & Commission established; CAC created	
1990	<b>Learning</b>	
1991	<ul style="list-style-type: none"> <li>• MDBC NRM Strategy</li> </ul>	
1992	·Barmah-Millewa Forest	
1993	Management Plan / Agreement	
1994	– creation of the B-M environmental reserve	
1995	Report on	
1996	Water Use in the Murray-Darling Basin	
1997	<b>Strategy Development</b>	
1998	<ul style="list-style-type: none"> <li>• Cap on Diversions</li> </ul>	<ul style="list-style-type: none"> <li>• ·Lake Victoria cultural heritage protection – investigation &amp; worksBarkindji Elders Committee &amp; Lake Victoria Advisory Committee</li> </ul>
1999	<ul style="list-style-type: none"> <li>• Salinity Audit</li> </ul>	<ul style="list-style-type: none"> <li>• MLDRIN MOU drafted</li> </ul>
2000	<ul style="list-style-type: none"> <li>• ICM Policy Statement</li> </ul>	<b>Learning</b>
2001	<b>Action (projects)</b>	<ul style="list-style-type: none"> <li>• Scoping Study on NRM involvement</li> <li>• Indigenous employees</li> </ul>
2002	<ul style="list-style-type: none"> <li>• E-Flows Expert Reference Panel report</li> </ul>	<b>Strategy Development</b>
2003	<ul style="list-style-type: none"> <li>• Murray Mouth dredging</li> <li>• MDBMC First Step Decision on TLM</li> <li>• River Red Gum health survey &amp; trial flooding</li> </ul>	<ul style="list-style-type: none"> <li>• MLDRIN MOU signed by NSW</li> <li>• Indigenous Action Plan developed</li> <li>• TLM Indigenous Partnerships Project developed</li> <li>• MLDRIN MOU signed by MDBC</li> </ul>
2004	<b>On-ground outcomes (results)</b>	
2005	<ul style="list-style-type: none"> <li>• Riparian response &amp; bird breeding events</li> <li>• Flooding through weir raising</li> </ul>	
2006	<b>Monitoring &amp; improvement</b>	
2007-08		
		<b>Action (projects) - Cultural mapping</b>

### ***Cultural Flow Definition***

*“Cultural Flows” are water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations”.*

### ***Impacts and Benefits of Cultural Water***

Cultural Water can be used for the following purposes:

- Empowerment and social justice - water is delivered to Country by the peoples;
- Growing native plants;
- Protecting and hunting animals;
- Song, dance, art and ceremony;
- Spiritual sites; and
- Improved cultural-economic and health outcomes through the provision of food, medicines and materials for art.

### ***Operation and volume of Cultural Water***

The difference between environmental and cultural water is that it is the Indigenous peoples themselves deciding where and when water should be delivered based on traditional knowledge and their aspirations. This ensures Indigenous peoples are empowered to fulfil their responsibilities to care for Country.

Questions of volume need to be explored through scoping work with the Nations. However the volume of water needed to bring the Rivers back a healthy state is well-known. The share of that water which indigenous peoples manage should be negotiated using informed consent and good faith processes.

Furthermore, MLDRIN has been involved in the *The Living Murray’s Indigenous Partnerships Project* (IPP) which has at its core the full participation of Indigenous peoples in the natural resource management, particularly water management through the drafting and implementation of environmental watering plans. The IPP is piloting Use and Occupancy mapping will be used by the piloted Nation and MLDRIN will assist in incorporating



Indigenous knowledge into the environmental watering plans. This will give a good indication of where, when and how much water is required in a cultural flow at the TLM Icon Sites.

Further work will need to be done to ascertain cultural flows for other parts of Country.

## **International Recognition of Indigenous Rights to Water**

### ***International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD)***

A number of the provisions of the CERD are relevant to the rights of Indigenous Peoples to access and use their traditional water resources. For example, Paragraph 5 of Recommendation 23 of the CERD requires:

“The Committee especially calls upon State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories”.

### ***World Heritage Convention 1972***

The 1972 *UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage* recognized cultural landscapes and their links to conservation and biodiversity with the inclusion of a new category of World Heritage Site as ‘Cultural Landscape’. Despite this emphasis on the recognition for Indigenous concepts of culture and appreciation of the sacred nature of particular sites, a recent analysis of the implementation of the provision for the protection of cultural landscapes reveals the Euro-centric nature of those sites listed, creating a gap in the diversity of protected areas, beyond the European and North American Regions. In addition, protection of cultural landscapes can be subject to the political and economic conditions within countries party to the Convention. In times of political crisis or the occurrence of a natural disaster, the safeguarding of cultural integrity commonly lapses. Economic and social focus often shifts to re-establishing the community and reconstructing essential infrastructure. In an effort to remedy this trend, site listing guidelines may be modified to encourage increased undertaking by parties to the Convention who represent a range of cultural backgrounds. It is suggested that the inclusion of additional guidelines to assist categorization of wider perspectives for cultural landscapes.

### ***International Covenant on Cultural, Economic and Social Rights***

The broader implications of a right to the self-determination of Indigenous Peoples are elucidated within Article 1 of the Covenant as:

“(1) All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence.”

The right to self determination is a common feature towards the recognition of autonomy and the reinstatement of self-sufficiency for Indigenous Peoples throughout these agreements. Self-determination is a pertinent requirement for Indigenous Peoples representing the broader foundation from which rights to water and other natural resources are acknowledged. Access and entitlement to resources are not sought in isolation but are part of a framework from which Peoples may realize empowerment and autonomy.

### ***International Labour Organization Convention 169***

ILO 169 is the only legally binding international instrument for the protection of Indigenous and Tribal Peoples. International law has traditionally focused on upholding state sovereignty but has increasingly focused on the rights of the individual and the collective rights of peoples under the laws of their state. The ILO 169 deals specifically with Indigenous rights including the recognition of the right to self-determination in a broader context of inclusion in decision-making and resource management. However, the initiative has suffered from poor uptake, diminishing its usefulness to a foundation for debate on issues of Indigenous rights.

### ***Convention on Biological Diversity 1992***

A significant authority in the recognition of Indigenous roles in conservation was created by the United Nations Convention on Biological Diversity. The Preamble recognizes the “Close and traditional dependence of many indigenous and local communities embodying traditional

lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.” Further, Article 8(j) states obligations of signatories as:

“Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

Indigenous Peoples have historically been excluded from planning and decisions regarding resource use, with little account taken of these perspectives. Participation is essential given their spiritual connection with the land and the traditional knowledge for management practices which are beneficial to restoring and maintaining modern ecosystems. The emerging incorporation of participatory rights for Indigenous People within legal regimes and market mechanisms is essential to recognizing their inherent rights and the contribution that can be achieved in consulting from a range of perspectives. This may be observed most apparently within European regulation, for example, as an underlying principle for the *Convention on Access to Information, Public Participation in Decision-Making and Access to justice in Environmental Matters*.

### ***Draft Declaration on the Rights of Indigenous Peoples***

This declaration is a significant instrument in stating the basic requirements for adequate rights and protection of Indigenous Peoples. The following articles of the Declaration have been identified as the most important from a natural resource management perspective:

- States will provide effective mechanisms to prevent any actions which have the aim or effect of dispossessing Indigenous peoples of their lands, territories or resources. (**Article 8**).
- Indigenous peoples have the right to be secure in the enjoyment of their own means of subsistence, and should they be deprived are entitled to just and fair redress. (**Article 20**).

- The right to traditional medicines and to maintain health practices, including the conservation of vital medicinal plants, animals and minerals. (**Article 24**).
- “Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupies or used, and to uphold their responsibilities to future generations in this regard” (**Article 25**).
- Indigenous peoples have the right to own, use and develop the lands, territories and resources, which they have traditionally owned. Additionally States should give legal recognition and protection to these areas. (**Article 26**).
- States shall establish and implement, in consultation with indigenous peoples concerned, a fair system to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources. (**Article 27**).
- Indigenous peoples have the right to redress, which can include restitution or compensation, for the lands, territories and resources which they have traditionally owned but have been confiscated, taken, occupied, used or damaged without their consent. Compensation usually taking the form of lands, territories and resources equal in quality, size and legal status or monetary compensation. (**Article 28**).
- Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands and territory and resources. States shall establish and implement assistance programs for Indigenous peoples for such conservation protection, without discrimination. (**Article 29**).
- States will take effective measures to ensure that no storage or disposal of hazardous materials shall take place on lands or territory of Indigenous peoples without their consent. (**Article 29**).
- Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, cultural expressions and manifestations of their sciences, technologies and cultures. This includes human and genetic resources, seeds, medicines and knowledge of traditional flora and fauna. (**Article 31**).
- Indigenous peoples have the right to determine and develop priorities and strategies for development or use of their lands or territories or other resources. (**Article 32**).

The right to water within the broader context of human rights is emerging as a crucial element, as the entitlement to water resources will affect the capacity to achieve these others, such as the right to life or a healthy standard of living. Self-sufficiency of Indigenous communities will therefore require provision for participation and consultation regarding decisions that will affect them and the resources they depend on.

Rights enshrined in international agreements can have an influence on recognition of rights in relation to natural resource management, as demonstrated in the case study below.

### **Water Act 2007/Water Amendment Bill 2008**

#### ***General Comments***

The *Act* gives scant regard to the rights and interests of Indigenous peoples in relation to water management and it falls short of any significant innovation in failing to undertake a holistic approach to water allocations and recognising the right of Aboriginal communities to water for cultural purposes. Aboriginal interests are only referred to indirectly, including:

- having regard to social, cultural, Indigenous and other public benefit issues, in developing the Basin Plan,,
- uses to which the Basin water resources are put in the Basin, including uses by Indigenous people, as mandatory content within the Basin Plan,
- an eligible level of interest within community, Indigenous or local government matters, for appointment as a member of the Basin Community Committee which advises on the performance of the Murray Darling Basin Authority,
- under principles of Basin water market and trading as a restriction on extraction, diversion or use of water resulting from trade to manage features of major Indigenous cultural heritage or spiritual significance.

The following factors highlight the need for strengthening the provisions for Indigenous peoples within the *Water Amendment Bill 2008*:

- The history and contemporary connection of Indigenous peoples to lands and waters;
- The current poor status, socio-economic condition and paucity of ownership of and access to land and waters by Indigenous peoples in the Murray Darling Basin;
- The current trend in the recognition of Indigenous rights to lands and water both internationally and nationally; and
- The history of work and relationship building that has occurred over the last 10 years between the jurisdictions and Indigenous peoples;

***Cultural Water***

There is currently no provision for inclusion of Cultural Water allocations within the *Water Act 2007*, either in any broad sense or specific water delivery components.

***Water Act Regulations: Participation of Indigenous Peoples***

The *Act 2007* does not provide for a consistent basis for on-going relationships between the newly formed Murray Darling Basin Authority and Indigenous organisations such as MLDRIN, as articulated in the MoU between MLDRIN and the Murray Darling Basin Commission.

In addition, there is no specific process outlined for engagement with Indigenous peoples within the *Act* nor is there any allocated membership on the newly formed Murray Darling Basin Community Committee.

## **Recommendations**

MLDRIN makes the following recommendations to enhance the *Water Act 2007* to better reflect the needs and aspirations of the Murray Darling Basin's Indigenous Peoples, that:

1. The Government fully recognise the significance of the Murray-Darling River Basin to the Indigenous Nations whose lands lie within the Basin, and incorporate our distinct rights to water, the environment, economic development and participation and engagement into the *Water Act 2007*;
2. The Government should ensure that the *Act* is consistent with international mechanisms such as Ramsar, Declaration on the Rights of Indigenous Peoples and other relevant processes and documents;
3. The *Water Amendment Bill 2008* provide that the power of the Authority to acquire, hold and dispose of real and person property, to contract and to lease lands for the purposes of the Authority must be with the exception of those lands secured for the benefit of Indigenous peoples and their communities, unless it is with the free, prior and informed consent of those Indigenous peoples whose rights are being affected through an agreement based process;
4. The *Water Amendment Bill 2008* includes further amendments at s178 (2) that make provision for specific Indigenous membership on the Murray-Darling Basin Authority;
5. The *Water Amendment Bill 2008* includes further amendments at s202 (5) that make provision for specific Indigenous membership on the Basin Community Committee;
6. The *Water Amendment Bill 2008* includes an amendment to s202 (3), to provide that the Basin Community Committee must also establish an Indigenous water subcommittee to guide the development and implementation of Cultural Water allocations;
7. The *Water Amendment Bill 2008* includes further amendments at ensure that any technical committee or subcommittee have specific Indigenous membership;
8. The *Report to the Murray-Darling Basin Commission – Indigenous Response to the Living Murray Initiative* is considered by the Senate Committee and the Government to inform the current *Water Amendment Bill 2008*;



9. The *Water Amendment Bill 2008* endorses and protects Cultural Water in a broad sense as defined by MLDRIN and provides for its inclusion and implementation in the Basin Wide Plan, Water Sharing Plans, Environmental Watering plans and all other land and water management processes. This Cultural Water allocation should be at a high level of water entitlement to provide for security of entitlement;
10. The *Act* protects Indigenous cultural heritage and contemporary cultural connection in a provides for its inclusion and implementation in the Basin Wide Plan, Water Sharing Plans, Environmental Watering plans and all other land and water management processes;
11. The *Water Amendment Bill 2008* s86A (2), be expanded to recognise Indigenous cultural flows or Indigenous cultural water allocations as a 'critical human water need';
12. The *Water Amendment Bill 2008* includes an amendment to s202 (7), to provide for uses of water for Indigenous cultural purposes in the identification of water users; and
13. The Government consider establishing and where it already exists further support the ongoing work of Indigenous organisations who work on water issues, for example MLDRIN, through this legislation and policy where appropriate, with the informed consent of Indigenous peoples.



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RESEARCH  
DISCUSSION  
PAPER

**Indigenous Rights to Water in the Murray  
Darling Basin**

In support of the Indigenous final report to the  
Living Murray Initiative

Monica Morgan, Lisa Strelein and Jessica Weir

NUMBER 14

Indigenous Rights to Water in the Murray Darling Basin  
In Support of the Indigenous Final Report to the Living Murray Initiative

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## **Executive Summary**

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### **Indigenous Nations of the Murray – first and last**

The Indigenous Nations were the first peoples of the Murray, the first managers, the first to earn their livelihoods, and the first to congregate and recreate on the river. Because of their asserted sovereignty through law and spirituality, they are contemporary custodians and they will likely be the last people to leave the Murray. This relationship places Indigenous Nations of the Murray in a unique situation as interest holders.

### **Shared interests in a healthy river**

The Murray Darling Rivers Indigenous Nations (MDRIN) (or ‘Indigenous Nations’) share the vision of the Murray Darling Basin Commission (MDBC) for a healthy, living river with natural flows and cycles, sustaining communities and preserving unique values.

In the current context, the difficult task of determining how best to manage the scarce water resources of the Murray River cannot ignore or avoid the inherent rights of the Indigenous Nations to these water resources and the surrounding ecosystem.

### **Non-discrimination principle**

The *Racial Discrimination Act 1975* (Cth) (RDA) provides protection for Indigenous peoples’ individual and collective rights. The RDA creates an obligation on governments to deal with Indigenous interests in a non-discriminatory manner, and governments and agencies must exercise their power to deal with property in a manner consistent with the RDA.

Failure to do so now may be predicted to cause future potential delays, lack of certainty in decision making and may possibly result in structural impediments to transparency and certainty in decision making

Equal treatment in this context must take into consideration the equal enjoyment of rights as citizens, particular interests as Indigenous peoples and the history of discrimination. Specific measures may be required to ensure the standard required by the RDA is met.

### **Reparations and compensation**

Compensation is a remedy of last resort in relation to Indigenous peoples' traditional lands and waters. Only where it is impossible to protect or return lands should compensation be considered, and then, it should be considered in the form of land and waters before monetary compensation.

### **Outcomes and mechanisms**

#### ➤ *Sustainability and the precautionary principle*

The precautionary principle should be applied when making decisions on the impact of returning water to the environment. The implications of failing to return health to the river has a disproportionate impact on the relationship of Indigenous peoples' with the Murray as it is linked to their cultural and spiritual identity and their status as first peoples of the Murray River.

#### ➤ *Indigenous priority in water allocation: a cultural flow*

Section 211 of the *Native Title Act* provides a precedent for the prioritisation of Indigenous rights to natural resources second only to environmental and scientific research concerns. Indigenous peoples are entitled to seek such a priority in the future allocation of water resources. The allocation of water rights should consider the environmental flow and the cultural flow, arguably on a Nation by Nation basis, before commercial or other economic interests.

#### ➤ *Water allocation rights*

For the Indigenous peoples of the Murray River, water resources are an opportunity for developing rural industries. Water allocation rights can mean inclusion in the water trading environment for economic development opportunities, or for achieving cultural and environmental objectives by allocating water for cultural or environmental flows.

The allocation of water directly to Indigenous Nations and/or local Indigenous communities is the most appropriate model. A generic water trust or provision for affects on native title rights and interests would be unlikely to achieve the objectives of self-management and economic development.

➤ *Co-management*

Co-management of water resources and the natural and cultural heritage of the Murray River provides a mechanism for negotiating responsibilities to water. MDRIN have proposed a co-management model that would see Cultural Heritage Management Protocols negotiated separately with each Indigenous Nation, working under an umbrella agreement for the region. Parts of the river could become protected areas for the purpose of restoring native fish and vegetation.

**Understanding the diversity of Indigenous interests**

The distinction between the ‘community of Traditional Owners’ and the ‘local Indigenous community’ is complex. Traditional owners are not always members of the local Indigenous communities that exist on their traditional country, and not all members of those local Indigenous communities are traditional owners. These different communities of interest must be appropriately represented in the decision-making processes of the MDBC.

**Procedural rights: the right to be engaged in decision-making**

More than consultation, Indigenous peoples have called for substantive involvement in policy and decision-making, as well as direct involvement in environmental management. In international

law, a measure of whether Indigenous peoples enjoy equal rights in respect of effective participation in public life is to ensure that ‘no decisions directly relating to their rights and interests are taken without their informed consent’. Informed consent requires more than mere consultation, it requires meaningful roles in the process and power in determining the decisions and outcomes.

➤ *Self-determination: Indigenous peoples rights as first peoples*

Within Australia as a whole, Indigenous peoples hold a special status as the first peoples of this land. Their status as first sovereigns necessitates that they be distinguished from other minorities by virtue of their distinct histories as political entities. At its heart, the call for recognition of the right to self-determination concerns the nature of engagement between Indigenous peoples and government

➤ *Indigenous governance and internal authority*

Indigenous people have their own rights and obligations under Indigenous law and custom in the Murray River. The laws of Indigenous Nations regulate the transmission of property rights, access to land and waters, responsibilities relating to land and waters, use of resources, and a myriad of other rights, responsibilities and community controls.

Imposed structures of governance can undermine the integrity of Indigenous Nations internal authority structures and destabilise the outcomes of engagement. There is a role for government to play in resourcing the development of Indigenous governance arrangements in a manner that is responsive to the needs and aspirations of specific Indigenous groups for self-sufficiency and self-determination.

Meeting the principles of the COAG Reconciliation Framework through investment in permanent structures of engagement can lead to efficient policy development and meaningful outcomes built on sound human rights principles.

**Substantive rights: Indigenous Nations as owners and custodians**



Apart from the procedural mechanisms to ensure meaningful involvement of Indigenous Nations in decision-making and management, specific measures may be introduced to recognise substantive rights or specific interests that arise from Indigenous ownership and custodial responsibilities, including:

- Access land and waterways;
- Use and enjoyment of the natural resources;
- Hunting, fishing and foraging; and
- Protection of cultural heritage and identity.

Australian governments have a responsibility to recognise and protect the distinct enjoyment of such rights by Indigenous people in order to protect activities that are central to cultural survival.

Indigenous rights to fish in the Murray Darling Basin are recognised by the Commonwealth *Native Title Act*, and by New South Wales and Queensland state legislation. Indigenous people also have hunting and gathering rights under most national parks legislation.

➤ *A right to water*

Indigenous rights to onshore waters are part of a holistic system of land and water management. This holistic system has been fractionalised and encroached upon by European systems of land and water management, and by the accompanying environmental impact.

In order to enjoy other rights, such as fishing rights, it is first critical to have access to a healthy river system. Where water rights are to be separated from land, Indigenous peoples' interests in the access use, enjoyment of those waters should be adequately protected.

➤ *The right to economic development*

It is well accepted that societies of the Murray Darling actively participated in redistribution networks that provided reciprocal

rights of access to each others land and resources, that these commodities were exchanged for other goods of value and prestige and that the resources and minerals of the land were owned by specific individuals and groups. Indigenous people have been marginalised from this economic base, and have a right to be included in the economic benefits derived from the heritage of their natural resource management. As rights holders and traditional owners, Indigenous Nations have the right to share in the benefits that may result from the use of their traditional lands, resources and knowledge.

### **The right to protect cultural heritage and identity**

A central concern expressed in the *Living Murray* consultations was that current catchment management practises are not considering the cultural knowledge of the Indigenous Nations. Indigenous Nations and knowledge holders have expressed a desire to share this knowledge in the management of their traditional country.

This willingness to share knowledge must be measured against a concern to control access and use of knowledge, including language. The right to protect cultural knowledge extends beyond knowledge about specific places, and protecting those places. Indigenous Nations seek to maintain the ownership of intellectual and cultural property and any commercial advantage that may be derived from their use.

#### ➤ *Relationships with particular species of flora and fauna*

Indigenous Nations will emphasise the cultural and spiritual importance of particular species, many of which are at risk or have abandoned their traditional country. The relationship with such species requires protection and revitalisation.

#### ➤ *Sites of significance*

As property rights holders, the Indigenous Nations have a right to control access to sites, places areas and objects of significance, a right to protect unauthorised or inappropriate use of such sites and

places, and a right to control and manage the transfer of cultural knowledge about these places. This may involve the management of flows and effects of flooding.

### **The right to equal enjoyment of human rights**

Indigenous people should be guaranteed equal enjoyment of human rights, such as health, housing, and access to clean water. Clean water access is critical for health in all communities; in Indigenous communities lack of supply of clean water is linked to high morbidity and mortality rates.

Unlike the broad rural demographic trends of rural-to-urban decline and an ageing population, Indigenous Nations are staying on their land, and Indigenous Nations and Indigenous communities have growing, young populations. Supporting these Indigenous communities is integral to the support of the socio-economic viability of rural Australia.

Overcoming historical disadvantage in the provision of services and infrastructure and the future development of growing local Indigenous communities and Nations should be incorporated into planning objectives.

### **Recognition in domestic legislation and policy**

The exercise of the rights and responsibilities under Indigenous law is rarely supported by express recognition within the non-Indigenous legal system. However, state land rights regimes, customary fishing and hunting reservations, and of course the *Native Title Act* have either explicitly or implicitly acknowledged the fact of Indigenous occupation of traditional country and the continuing cultural authority of those communities.

#### ➤ *Australia's International obligations*

The Australian government has ratified international human rights instruments such as the Covenant on Civil and Political Rights, and the Convention on the Elimination of Racial Discrimination. This ratification creates positive obligations on governments to

guarantee the enjoyment of human rights. It also establishes benchmarks for best practice, particularly for Commonwealth Agencies, Governments and intergovernmental processes.

➤ *Native title*

Native Title is based on the sovereignty of Indigenous Nations and the rights to land and waters that predate the assertion of sovereignty by the British and continued after the colonisation of the continent with the recognition and protection of the common law.<sup>1</sup> The *Native Title Act* refers to the 'land and waters' as a single proposition. Determinations of native title have similarly undifferentiated land and waters in the determination area and successful determinations have listed access to water or water related rights.

However, recent cases have restricted the number of Indigenous peoples who will have access to native title as a means to protect their inherent rights or to enforce their traditional laws. The wholly or partially extinguishing effects of historical tenures will be particularly devastating for Indigenous peoples of the South East of Australia.

The extent of extinguishment and the limits that have been built into the legal doctrine of native title suggest that native title should not be the only benchmark for the engagement of Indigenous Nations.

➤ *Land and water legislation*

Responsibility for the control and management of inland waters and waterways rests primarily with the States. While the Commonwealth Parliament does not have an express power to make laws for the regulation and management of inland waters, increasingly State and Territory laws and policies in relation to waters are being guided by international law and national policies. The principal forum in which these national policies are developed and implemented is through COAG.<sup>2</sup>

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1 (1992) 175 CLR 1, p. 60 per Brennan J.

<sup>2</sup> Indigenous Rights to Water Report: Lingiari Report to ATSIC, draft.

Only the New South Wales and, to a lesser extent, the Queensland legislation contain provisions dealing with distinct Indigenous interest in waters (*Water Management Act 2000* (NSW), *Water Act 2000* (Qld)). This lack of legislative recognition is reflected in the water allocation plans currently being developed or implemented in most Australian jurisdictions.

## Background

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This Discussion Paper was developed in response to the direction from the Ministerial Council meeting 33 – 9<sup>th</sup> May:

*Council requested further consideration by the Commission of issues raised by traditional owners, including Indigenous interests in water, and indicated its intention to review the implications at its November 2003 meeting.*

The Discussion Paper draws on the outcomes of the Indigenous peoples' consultations with the Murray Darling Basin Commission (MDBC) as part of the *Living Murray Initiative*. This Paper seeks to place the views and aspiration expressed in those documents within a broader Indigenous rights context. While this paper often focuses on the Murray River as an engagement with the *Living Murray Initiative* many of the issues raised are relevant to both the Murray and Darling Rivers and more broadly.

### **Engagement with the MDBC**

As part of the MDBC's vision for sustaining communities in the Murray Darling Basin, the Commission has been engaging with Indigenous communities, and consulting with the Murray Darling River Indigenous Nations (MDRIN).

The MDRIN confederation includes the traditional owner groups Wiradjuri, Yorta Yorta, Snowy Mountain Nations, Barapa Barapa, Wamba Wamba, Muthi Muthi, Nyampa, Latji Latji, Wadi Wadi, Wergaia, Barkanji, and Ngarrinjeri. MDRIN is a discrete group of Indigenous Nations within the Murray Darling Basin.

The Indigenous Nations have sought engagement with governments and agencies about the health of the rivers and their rights in relation to the surrounding environment for generations. MDRIN was formed in 1999 as a confederation of traditional owner groups to provide a coordinated approach to policy

development and management of the rivers. As a result of this ongoing engagement, a Memorandum of Understanding is currently being negotiated to recognise the unique relationship between the Commission and the Indigenous Nations.

The Indigenous Action Plan being developed by the Commission seeks to implement the Council of Australian Governments' (COAG) Reconciliation Framework and integrate its principles into the management of the Murray Darling Basin.

The *Living Murray Initiative* has run a parallel community consultation process with the diverse Indigenous Nations and Indigenous communities who assert association with the Murray River to gauge their responses to the *Initiative*, and to feed into the work of the MDB Ministerial Council.

➤ *The Living Murray Initiative and COAG projects*

The *Living Murray Initiative* examined:

- the social, cultural, economic and environmental benefits and costs of returning water to the environment
- issues concerning the recovery and management of environmental flows; and
- mechanisms to manage and monitor the impacts of any decisions

This work is inextricably linked to the Council of Australian Governments' Water Reform Agenda, which introduced private rights in water, and the MDBC water trading pilot. Water has now been separated from land as a property right. State governments have the power to determine allocations of water and to regulate trading of water within their jurisdictions.

➤ *The Indigenous Response to the Community Engagement*

In response to the community engagement process surrounding this work, the Report of the *Indigenous Response to the Living Murray Initiative* identified five central themes:

- ***A shared vision:*** While recognising the diversity of views among Indigenous Nations and local communities, as well as the different perspectives from various state governments and non-indigenous communities, Indigenous peoples of the Murray seek a shared and integrated vision for a healthy river;
- ***Recognition:*** The report seeks recognition of the status of Indigenous Nations as peoples, and of their inherent rights to exercise their culture and sustain their communities on their traditional lands;
- ***Respect for country:*** The environmental health of the Murray is prioritised in the Report as it is integral to the cultural social and economic health of Indigenous communities;
- ***Involvement:*** Throughout the report Indigenous peoples emphasised their desire to be actively involved at all levels of management of water and other natural resources on their traditional lands; and
- ***Policy change:*** Indigenous peoples also proposed specific changes to policies central to the *Living Murray Initiative* as well as a general change in approach toward a cultural and natural resource model.

➤ *The Indigenous Rights Discussion paper*

MDRIN and the MDBC sought assistance from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) to prepare this report. An expert roundtable was convened at AIATSIS on 15 August 2003, and the views and opinions raised by the expert panel contributed to this Discussion Paper.

The Round table consisted of:

Assoc Prof Donna Craig	Centre for Environmental Law, Macquarie University
Marg Donaldson	Native Title Unit, HREOC



Dr Sandra Panell	Rainforest CRC James Cook University
Dr Michelle Cochrane	Centre for Aboriginal Economic Policy Research, ANU
Glen Kelly	WA Native Title Working Group
Paul Kauffman	ATSIS - Land Water and Economic Development Division
Wieslaw Lichacz	ATSIS - Land Water and Economic Development Division
Dr Graham Henderson	MD, AIATSIS VRF-Social Health
Dr Peter Veth	AIATSIS, President Association of Consultant Archaeologists
Stuart Bradfield	AIATSIS, VRF- Native Title and Agreement Making
Monica Morgan	MDBC
Wendy McIntyre	MDBC
Liz McNiven	MDBC
Kevin Goss	MDBC
Dr Lisa Strelein	AIATSIS Manager, Native Title Research Unit
Jessica Weir	Centre for Environmental and Resource Sciences ANU

AIATSIS and the expertise that was gathered for the roundtable are committed to providing continuing support beyond this Discussion Paper to bring greater research and expertise to bear on the decision-making and outcomes development processes of MDRIN and the MDBC. A second expert roundtable was held on 5 December 2003, with participants from the first roundtable and additional expertise from:

Michael Bissell	Minerals Council
Derek Walker	MDBC Ministerial Council CAC
Marcia Langton	University of Melbourne

Lisa Palmer	University of Melbourne
Louise Rose	MDBC
Warwick McDonald	MDBC
Donna Oxenham	AIATSIS Visiting Scholar
Tony Bauman	AIATSIS Visiting Research Fellow
Patrick Sullivan	AIATSIS Visiting Research Fellow
Jane Anderson	AIATSIS Visiting Research Fellow
Michael Davis	Consultant

Recognition of Indigenous peoples' rights in relation to the natural and cultural heritage and economies of the rivers is the first step in enabling the Murray Darling Basin Commission, the Ministerial Council and the governments involved to support the Indigenous Nations and communities' desire to foster a partnership model for cultural and natural resource management that can provide a leading example for Australia.

## **Indigenous Nations of the Murray – first and last**

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Indigenous Peoples of Australia have an inherent relationship with their traditional country. As the original owners, they have never relinquished sovereignty over or connection to their lands and waters. Indigenous peoples have unique rights in the lands over which they have traditional custodianship which inhere in the very meaning of Aboriginality.

Indigenous peoples' relationship with the land is more than a random coincidence of presence and use. This relationship involves an ancient history with the land and unique systems of law, custom and spirituality that regulate land and water management.

The Indigenous Nations are the traditional owner groups of the Murray Darling River Basin. As self determining autonomous entities, they each make decisions based on their traditional affiliations between family groups which are connected and united through language and kinship lines.

Each Indigenous Nation occupies a core area of land on either one or both sides of each major watercourse, which can overlap with and share with the country of an adjoining Indigenous Nation. Each Nation has a unique connection to their particular stretch of river that is sourced in their creation story and is governed by their distinct tradition, laws and customs.

The ability to continue to exercise collective rights to enjoy and benefit from the natural resources of their lands and waters, must be maintained for the future of each Indigenous Nation. Their interests in the Murray go deep into their identity as an identifiable people.

The interconnectedness between humanity and the environment as a holistic entity is the essence of Indigenous peoples' culture, spirituality and life. The health and recovery of the rivers' ecosystems and Indigenous Nations' access to it is central to the

spiritual, cultural, social, and economic survival of the Indigenous Nations of the Murray.

The Indigenous Nations are the first peoples of the Murray Darling Basin, the first managers, the first to earn their livelihoods the first to congregate and recreate on the rivers. Because of their cultural connection through law and spirituality, they remain the contemporary custodians and they will likely be the last people of the Murray Darling Basin. This relationship places the Indigenous Nations in a unique situation as interest holders.

The permanency of the relationship held between Indigenous peoples and their land and environment creates the imperative for a radical reconsideration of the management of the rivers in a manner that respects the intergenerational connection between Indigenous peoples and the Murray Darling Basin, including: protecting the environment for future generations of the Indigenous Nations; respecting the rights of the Indigenous Nations to use and draw their livelihood from the rivers; and incorporating the Indigenous Nations into decision-making

## Shared interests in a healthy river

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The Indigenous Nations of the Murray share the vision of the Murray Darling Basin Commission (MDBC) for a healthy, living river with natural flows and cycles, that sustains communities and preserves unique values. Similarly, all Australians have an interest in protecting Indigenous heritage. Indigenous heritage is part of Australia's heritage and its protection and maintenance benefits the whole of the Australian community.

Indigenous people are an integral and integrated part of the social, cultural and economic communities of the region. Many communities and individuals hold land in the region and are often a substantial part of the population of towns and regional centres. Their contribution is important to the maintenance of services and infrastructure in regional areas.

The interdependence of Indigenous people and the broader community ensures that there are many shared interests and objectives:

- Indigenous people are part of the *social community* of the Murray River, and seek to improve the health of the river for social outcomes, from recreation through to clean drinking water for towns and communities.
- Indigenous people as residents and users of the Murray River are part of the *economic community*; the river has long maintained their traditional lifestyles across their country and the modern economic life of Indigenous Nations, as it has supported the economies of the irrigators and farmers and the towns that have developed around such industries.
- Indigenous people have a shared interest with the *environmental community* to restore the natural river environment. The degradation of the Murray River has restricted the ability of Indigenous people to manage their land and water resources in a manner that can be sustained for future generations.

The Indigenous Nations share interests with the Commission itself as the governments' appointed custodian of the river.

Indigenous custodianship of the region necessitates an integrated and holistic approach to river management.

The Indigenous Nations support the view of the MDBC that the health of the Murray River cannot be addressed by protecting individual rivers and catchments; an integrated whole of Basin approach is needed. While recognising the inherent diversity of the Indigenous Nations, the formation of Murray Darling Rivers Indigenous Nations (MDRIN) assists in achieving this ‘one Basin’ approach.

- That the issues, concerns, values and aspirations of Indigenous people be placed on the Issues Log of the broad community engagement process and be considered by the MDBC and the Ministerial Council.

*Recommendation from the Indigenous Response Final Report*

## **Understanding the diversity of Indigenous interests**

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The diversity of Indigenous interests in the Murray Darling Basin was raised in a 2003 study by the MDBC. The MDBC saw the need for this Scoping Study to advise them on the barriers and constraints to engaging with Indigenous Peoples in natural resource management decision making and the integration of Indigenous cultural heritage considerations into relevant Murray Darling Basin Commission Programs.

### **Two Constructs of Indigenous ‘Community’**

Chapter Four of the Scoping Study elaborates on the importance of “*Two Constructs of Indigenous Community*” for natural resource management decision making:

- *it is important for government policy [to be] conceptually clear about how to aim for Indigenous involvement that is relevant to the two different constructs of Indigenous community. Involvement by Traditional Owners is critical to cultural heritage protection and the broader aspirations for recognition of Indigenous rights and responsibilities towards lands and waters.*
- *That in natural resource management and cultural heritage decision making, it is appropriate that agencies pay most attention to effective involvement of Traditional Owners, (also known as Indigenous Nation), because only they can speak for Country. Efforts must focus on negotiating and building strong partnerships with the Traditional Owners.*

In distinguishing traditional owner groups as the focus of negotiations over land management, the report seeks to redress pre-existing assumptions about the nature of consultation with the Indigenous people in relation to the Murray Darling Basin. The report highlights the need to distinguish between consultations and outcomes required to address the needs of the local Indigenous community and the particular obligations to Indigenous Nations.

➤ *Local Indigenous Communities*

A local ‘Indigenous community’ comprises all the Indigenous people who live within a general locality or region. Involvement of this community is relevant to the broad social issues that governments have to redress in terms of Indigenous socio-economic disadvantage.

The term ‘Indigenous Community’ denotes a homogenous set of people who do not necessarily hold any traditional affiliations to the particular lands and waters on which they now reside. In the Murray Darling Basin there are few places where a majority of the population is Indigenous, so this ‘local Indigenous community’ is usually a subset of the broader community of the locality or region.

The majority of ‘local Indigenous communities’ are constructed through an affiliation to Indigenous community based organisations, holding membership based on democratic decision making processes similar to that of the broader society. Their core functions are in advancing the welfare of Indigenous people, usually by providing housing, health and other associated services.

These organisations were formed from a desire to promote the enjoyment of inherent and fundamental human and citizenship rights for Indigenous people equal in standard to those already taken for granted in the broader Australian society.

➤ *Traditional Owners, Communities or Indigenous Nations*

The concepts of traditional owners, communities or Indigenous Nations are concepts not dissimilar to ‘native title group’ as defined in the *Native Title Act*, in that these concepts encompass all the Indigenous people who have rights and responsibilities for lands and waters under their own customs and traditions.

They hold rights of inheritance that are unique to their territory and are recognised under their traditional laws and customs as



having spiritual, cultural and physical connection to the land. They also have responsibilities to care for homelands within their traditional boundaries. These rights are held in common as collective rights.

➤ *Distinguishing Between Indigenous Nations and Local Indigenous Communities*

The distinction between the ‘community of Traditional Owners’ and the ‘local community’ is complex, and it can be very hard for people outside these communities to be clear about how they operate in practice. Traditional owners are not always members of the local Indigenous communities that exist on their traditional country, and not all members of those local Indigenous communities are traditional owners.

The customary rights of the Indigenous Nations in the Murray Darling Basin relate to cultural self-determination and the preservation of distinctive cultural identities. With respect to questions of land and natural resource management, the Indigenous Nations hold particular interest in the governance structures that manage land and waters.

## Placing consultations in a human rights context

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International human rights have assisted Indigenous peoples by providing a language in which expectations can be articulated in terms familiar to non-indigenous people. These expectations extend from protecting and promoting the rights of Indigenous people as individuals but also to respecting group rights and the distinct collective rights of Indigenous peoples. It also extends to the concept of recognition the need to confront a history of discrimination and dispossession. The language of rights has informed many Indigenous statements of their interests in processes and management structures, particularly in relation to land management.

While the predominant philosophy behind the international human rights regime is one of individual rights, the International Human Rights Covenants and Conventions do contain rights of particular relevance to Indigenous peoples. The Covenant on Civil and Political Rights (the ICCPR) recognises, in Article 27, the rights of minorities to enjoy their own culture, religion and language. The Convention on the Elimination of Racial Discrimination (CERD) also contains particular articles, such as Article 5, which refers to the right to own and inherit property, including in association with others.

More fundamentally, each of the Human Rights Covenants, at Article 1, affirms the right of all peoples to self-determination.<sup>3</sup> This right was also one of the founding values of the United Nations and is contained in the UN Charter, article 55 among its key purposes. Self-determination and the equal enjoyment of human rights are seen as the corner stones of international community.<sup>4</sup>

The UN Human Rights Committee has used Article 27 to confirm the distinct enjoyment of rights by Indigenous peoples in order to

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<sup>3</sup> The right of all peoples to self-determination was also included in the United Nations Charter, among the purposes of the United Nations.

<sup>4</sup> The Charter, at Article 55, places self-determination of peoples together with the principle of equal rights as the basis for international peace and stability.

protect activities central to their cultural survival.<sup>5</sup> The Human Rights Committee has made clear that Article 27 protects issues of cultural importance such as the relationship of Indigenous peoples to their lands and waters. Moreover, protection of those rights may require ‘positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them’.<sup>6</sup>

Similarly, in 1997, the CERD Committee reaffirmed the application of the provisions of CERD to Indigenous peoples and asked States to include reference to them in their periodic reports. They reaffirmed the duty upon states to preserve and promote Indigenous cultural identity, to guarantee freedom from discrimination, to provide culturally appropriate and sustainable economic and social development, to provide effective political participation and the right to exercise Indigenous culture and language.

The Recommendation again singled out the relationship with land calling on State parties to protect the rights of Indigenous peoples to ‘own, develop, control, and use their communal lands, territories and resources’ and to ensure that ‘no decisions directly relating to their rights and interests are taken without their informed consent’. Further, State parties should take steps to return traditional lands, or where this is not possible to provide just, fair and prompt compensation, preferably in the form of lands.<sup>7</sup> These principles extend to the right to access and exploit their natural resources and particularly to protect and use waters.

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5 *Kitok v Sweden* UNDoc CCPR/C/33/D/197/1985 (1988); *Ominayak v Canada* UNDoc A/45/40 (1990) vol. 2 at 1; *Lansmann v Finland* UNDoc CCPR/C/52/D/511/1992 (1994); and *Lovelace v Canada* UNDoc CCPR/C/OP/1 (1988). See Pritchard, *Native title in international perspective*, op. cit., pp. 45-7 and Douglas Sanders, ‘Collective rights’, *Human Rights Quarterly*, vol. 13, 1991, pp. 379-80.

6 General Comment 23 (1994) paras 6.2, 7 UN Doc HR1/GEN/1/Rev1(1994), p. 40. See Pritchard, *Native title in international perspective*, op. cit., p. 45. See also Michael Dodson, *Aboriginal and Torres Strait Islander Social Justice Commissioner, Native Title Report Jun 1994-Jul 1995*, AGPS, Canberra, 1995, (ATSISJC 1995), p. 13.

7 Committee on the Elimination of Racial Discrimination, General Recommendation XXIII (51) concerning Indigenous Peoples, adopted at the

Australia has also ratified the United Nations Convention on Biological Diversity (1992) which places obligations on governments to reserve and protect Indigenous knowledge, innovations and practices in relation to biodiversity, including ensuring equitable benefit sharing arrangements.

The Human Rights Committee has stated that resource allocation is a central aspect of the right to self-determination. In relation to minority rights, the Committee on the Elimination of Racial Discrimination has called on State parties to:<sup>8</sup>

- recognise and respect Indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;
- ensure that members of Indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on Indigenous origin or identity;
- provide Indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
- ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent;
- ensure that Indigenous communities can exercise their rights to practise and revitalise their cultural traditions and customs and to preserve and to practise their languages.

These human rights instruments have been ratified by the Australian government. This ratification creates positive obligations on the Governments to guarantee the enjoyment of

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Committee's 1235th meeting, 18 August 1997 (UN Doc CERD/C/51/Misc.13/Rev.4), paras 1-2, 6.

<sup>8</sup> Pages 52, 2001 HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner Social Justice Report.

human rights. It also establishes benchmarks for best practice, particularly for Commonwealth Agencies, Governments and intergovernmental processes.

## Recognising the rights of Indigenous peoples

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### Self-determination: Indigenous peoples rights as first peoples

Indigenous Nations engaged in the *Living Murray* consultative process have expressed their desire to be respected as peoples, with a right of self-determination.<sup>9</sup> Self-determination can be understood as a statement of the appropriate way to respond to the aspirations of Indigenous peoples. Alternatively, it could be said to be a description of the nature of the process for attaining outcomes. In international instruments it is expressed as the right of peoples to ‘freely determine their political status and freely pursue their economic social and cultural development’. At its heart, the call for recognition of the right to self-determination concerns the nature of engagement between Indigenous peoples and government.

Within Australia as a whole, Indigenous peoples hold a special status as the first peoples of this land. Their status as first sovereigns necessitates that they be distinguished from other minorities by virtue of their distinct histories as political entities. At the time of Federation, a vast majority of the continent remained under Indigenous governance. Nevertheless, Indigenous peoples were excluded from the self-governing communities that came together to form the Commonwealth.<sup>10</sup>

Indigenous peoples in Australia have distinctive rights and a status based on prior and continuing occupation of land and waters, and authority and autonomy as distinct polities. Indigenous peoples’ contemporary identity is a window into and reflection of their past which shows strong threads of continuity and the survival of their distinct political, social, cultural and economic identity.

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<sup>9</sup> Indigenous Response to the Living Murray Initiative 2003, Final Report, p. 5

<sup>10</sup> See generally, Michael Dodson and Lisa Strelein, ‘Australia’s nation building: Renegotiating the relationship between Indigenous peoples and the State’, *UNSW Law Journal*, Centenary of Federation Special issue, vol. 24(3) 2001, pp. 826-839.

➤ *Indigenous governance and internal authority*

Indigenous people have their own rights and obligations to the Murray River under Indigenous law and custom. The laws of Indigenous Nations regulate the transmission of property rights, access to land and waters, responsibilities relating to land and waters, use of resources, and a myriad of other rights, responsibilities and community controls. The Indigenous Nations continue to assert and exercise these rights and responsibilities.

How an Indigenous Nation defines their laws and customs and how they relate these into communal, group or individual rights is the key to developing processes that for making decisions relating to their interests both within and outside of their lands and waters.

***2001 Social Justice Report***

*Indigenous groups and communities should be free to pursue self-determination and self-government through the governance arrangements they find most appropriate to their circumstances. They should not be limited to whatever policy prescriptions for 'self-determination', 'self-reliance', or 'participation' are in vogue but be able to determine what forms of representation, structures and processes are suitable to their particular group's needs and distinct characteristics.*

*Human Rights and Equal Opportunity Commission  
("HREOC") Aboriginal and Torres Strait Islander Social  
Justice Commissioner, p. 97*

In discussing the concept of internal authority Noel Pearson articulates that:

*Communally held titles necessarily have an internal and external aspect or dimension. That is, a group title necessarily has rules that governs the internal allocation of rights and interests amongst members of the group, and it has an external dimension; what*

*the title amounts to vis a vis strangers, the outside world.*

The Indigenous Nations are governed by an autonomous body of norms that can not be subject to any comparison with that of another Indigenous Nation or European legal system.

The internal structure or framework is reflective of traditional laws which are communal in nature, it is the customs or rules of the Nation which dictate the extent to which any individual, family lineage or other sub group has rights to possess and use lands and resources vested in the entire Indigenous Nation.

The external structure or framework is reflective of how the Indigenous Nation asserts their rights to the outside world on the possession and use of their lands, waters and natural resources using instruments of any State, Territory, national or international systems of law.

Internal governance and the freedom to develop structures that are appropriate to the circumstances of the group are essential to Indigenous peoples' exercise of self-determination. The Indigenous Nations have often been disadvantaged by having to construct or adjust governance structures to respond to government programs or policies.

The 2002 Social Justice Report reflects on the dilemma:

*In the face of growing interest within the Australian context and the potential for increased Indigenous governance and capacity-building, it is important not to lose sight of the place of the exercise of traditional rights and culture and the need for any new governance arrangements to be covered by recognition of the jurisdictional responsibilities, distinct rights and status of Indigenous peoples<sup>11</sup>*

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<sup>11</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission (HREOC), p. 97



Each Indigenous Nation faces enormous pressures in interpreting these rights and interests under traditional customary law into the legal, political and administrative structures of the Australian colonial system.

The key issue is to identify and develop strategies that retain Indigenous peoples' integrity within these two systems. Here the Social Justice Report suggests there is a joint responsibility in which governments can play a role:

*...there is a role for government to play in resourcing the development of any new Indigenous governance arrangements including a case for the centralised transfer of resources to communities in regions by Commonwealth agencies for the purposes of community development and increased governance. The conditions for receipt of any transfer of resources should in turn be responsive to the needs and aspirations of specific Indigenous groups for self-sufficiency and self-determination.<sup>12</sup>*

- That the MDBC proceed with the three-stage Indigenous Engagement Project detailed in the Feasibility Study and provide necessary resources
- That the MDBC provide a forum for Indigenous Nations to come together to determine their position on natural resource management issues and continue to provide support for MLDRIN in this respect

*Recommendations of the Indigenous Response Final Report*

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<sup>12</sup> *ibid.*

## The right to be engaged in decision-making

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Perhaps the most recurrent theme throughout the *Living Murray* consultations was Indigenous peoples' desire to be involved in the *Living Murray* deliberations. It was also clear that Indigenous peoples desired to have ongoing engagement with the Commission. In asserting rights and interests that go beyond mere consultation, Indigenous peoples have called for substantive involvement in policy and decision-making, as well as direct involvement in environmental management.<sup>13</sup>

Effective political participation is a central element of self-determination at international law. The CERD Committee, in recent criticisms of the Australian government, stressed the importance of process in relation to the right of political participation as essential to non-discrimination.<sup>14</sup>

The requirement for states to engage with Indigenous peoples at this level should not be dependent upon formal structures for legal recognition such as native title, but extend to all policy decisions that impact upon Indigenous peoples access to and use of traditional territories.<sup>15</sup>

Reiterating their General Recommendation XXIII,<sup>16</sup> the Committee has recognised that a measure of whether Indigenous peoples enjoy equal rights in respect of effective participation in public life is to ensure that 'no decisions directly relating to their rights and interests are taken without their informed consent'.<sup>17</sup> This is a high benchmark. It requires more than mere consultation.

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<sup>13</sup> Indigenous Response to the Living Murray Initiative 2003, Final Report p. 6.

<sup>14</sup> Committee on the Elimination of Racial Discrimination, *Decision (2)54 on Australia – Concluding observations/comments*, 18 March 1999. Un Doc CERD/C/54/Misc.40/Rev.2.

<sup>15</sup> Awas Tingni

<sup>16</sup> CERD GR XXIII (51), HRI/GEN/1/Rev.5, 18 August 1997

<sup>17</sup> CERD Decision (2)54, op.cit., para 9. The Committee held that this standard was not met by Australia in relation to the *Native Title Amendment Act 1998* (Cth).

Environmental and resource management decisions should be made in active consultation with the Indigenous Nations, and the consultation is not just informing people of decisions and impacts. Measures should give consideration to whether the Indigenous Nations themselves are able and willing to implement appropriate measures themselves.<sup>18</sup>

- That the Ministerial Council and the MDBC receive a delegation from Indigenous Nations to allow discussion of the issues

*Recommendation of the Indigenous Response Final Report*

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<sup>18</sup> See the Canadian decision of *R v Sparrow* [1990] 1 SCR 1075.

## Indigenous peoples as owners and custodians

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The Indigenous Nations assert a right and a responsibility to be involved in environmental and resource management programs concerning their country. The lands and waters of Australia are critical to the survival of Indigenous peoples' distinct cultures and communities. Measures for the protection and recognition of Indigenous peoples' rights in land and waters are based on their unique relationship with the land and waters; such measures are necessary to ensure the enjoyment of the fundamental rights of Indigenous peoples to their land and waters, culture and identity.

The holistic approach to land and claims to rights over country has meant that the Indigenous Nations of the Murray have not found it necessary to articulate their rights to waters separately when speaking of 'country'. This has been understood by governments who regularly include the terms land and waters together in their interpretation of Indigenous rights to 'country'.<sup>19</sup>

The separation of water from land in the current water reforms requires Indigenous people to now articulate their rights to waters separately in a language which governments can understand in the context of the property system.<sup>20</sup> The Indigenous Response lists, among other things, the following current uses and customary obligations:

- Access to drinking water;
- Fishing;
- Collecting food, fibre, medicines and other sustenance;
- The responsibility to pass on unpolluted water down stream.
- The right to protect cultural knowledge;
- to pass knowledge on and provide cultural education;
- to protect and access particular sites and species; and
- to maintain song lines and story lines involving the river;<sup>21</sup>

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<sup>19</sup> See *Native Title Act 1994* (Cth) use 'land or waters' throughout.

<sup>20</sup> See comments from Justice Sundberg in relation to the 'unbundling' of Indigenous peoples' rights over country: *Neowarra v Western Australia* [2003] FCA 1400 (8 December 2003)

<sup>21</sup> Final report, Attachment 1: Consolidated Community responses.

The Final Report of the Indigenous Response to the *Living Murray Initiative* argues that to fully respect the river and adjoining systems, the mouth of the River Murray should be open. This can only occur if the needs of the river are respected – which effectively means increasing natural flows, bringing back native fauna and flora and eradicating introduced species.

### **Rights to water**

Water is central to the survival of Indigenous peoples in Australia. Indigenous peoples' survival depended upon knowledge of the both the episodic and seasonal behaviour of the creeks and rivers, reliable water holes, and the availability of swamps, springs and soaks.<sup>22</sup> Careful management of the natural resources of the Murray meant that food would be available for important gatherings of thousands of people held over several days.

The right to use and to take water is an essential part of the historical and contemporary lives of Indigenous Nations. Today, water continues to be central to the survival of Indigenous people in Australia. As stated earlier in this discussion paper, the River Murray is central to cultural, spiritual, social, and economic sustainability and identities of the Indigenous Nations.

The right of Indigenous peoples to use and take water has been recognised in various native title determinations. The Martu and Ngurrara Peoples' determination, for example, recognized the right to 'take, use and enjoy the flowing and subterranean waters in accordance with their traditional laws and customs for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs, including the right to hunt on and gather and fish from the flowing and subterranean waters'.<sup>23</sup>

The difficult task of determining how best to manage the scarce water resources of the Murray River cannot side-step the inherent

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<sup>22</sup> Queensland Murray-Darling Committee, Regional Natural Resources Management Plan, Draft Version 2, December 2002, page 102.

<sup>23</sup> *James v Western Australia* [2002] FCA 1208 (27 September 2002)

rights of Indigenous Nations to the use, access, enjoyment and economic utility of the water of the Murray.

### **Use and enjoyment of the natural resources**

The hunting and fishing rights of Indigenous peoples are recognized by the number of provisions in existing legislation in numerous jurisdictions which preserve Indigenous peoples' right to hunt and fish, both within and outside of the native title context. The changed water regime of the Murray River system has affected the fishing economy, as one Indigenous respondent described, 'Fish traps are being destroyed due to constant high levels of water, and [we are] not being able to maintain the fish traps as we used to do.'

Rights to hunt or fish should be understood as merely specific articulations of general rights to use and enjoyment of natural resources from traditional lands Indigenous peoples right to harvest and husband the natural resources of their country should not be seen as a right of opportunity – dependent upon the availability of resources not otherwise in use or depleted – but as a positive responsibility placed upon natural resource management to protect access and incorporate it into the priorities for management.

### **The right to pursue an economic life**

Indigenous Nations have a right to pursue their economic life and develop economically.<sup>24</sup> Native title determinations agreed by consent have related this right to the native title and rights to country.<sup>25</sup>

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<sup>24</sup> See recent treatise on the right to development in ATSIJJC *Native Title Report 2003*, HREOC, chapter 1.

<sup>25</sup> For example, see . *Western Yalanji or "Sunset" peoples v Pedersen* [1998] 1269 FCA (28 September 1998) which recognised the right of the native title holders to 'exercise and carry out economic life on the determination area including the creation, growing, production, husbanding, harvesting and exchange of natural resources and that which is produced by the exercise of the native title rights and interests'.

The Indigenous Nations within the Murray Darling Basin had developed over many thousands of years an extensive trade and exchange system with other Indigenous Nations. Major quarry sites, with evidence of nearby specialist production centres for greenstone axes, and the trade of other commodities over vast tracts of the catchment, presents clear evidence for the storage and distribution of prized goods. It is well accepted that societies of the Murray Darling actively participated in redistribution networks that provided reciprocal rights of access to each others' land and resources, that these commodities were exchanged for other goods of value and prestige and that the resources and minerals of the land were owned by specific individuals and groups.

This trade is combined with the subsistence and communal use of the resources to provide the basis for a regional cultural economy. These customary uses translate into contemporary economic pursuits.<sup>26</sup>

- That the MDBC and the Ministerial Council ensure that cultural, environmental and social values are given equal weight with economic values in policy and management decisions and water pricing in the Basin

*Recommendation of the Indigenous Response Final Report*

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<sup>26</sup> In the application of Article 27 to economic development see *Lansman et al v Finland No. 1* (24 March 1994) CCPR/C/49/D/511/1992

## The right to protect cultural heritage and identity

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A central concern expressed in the *Living Murray* consultations was that many decision makers are not considering the cultural knowledge of the Indigenous Nations of the Murray. The right to control access to and use of knowledge, including language, practices and innovations is an important right of the Indigenous Nations. The right to protect cultural knowledge extends beyond knowledge about specific places, and protecting those places. The Indigenous Nations are entitled to seek to maintain the ownership of intellectual and cultural property, even in words, or in their use of or relationship with particular species, and in any commercial advantage that may be derived from their use.

The draft principles and guidelines for the protection of the heritage of Indigenous peoples by Chairperson-Rapporteur Madame Erica-Irene Daes on behalf of the United Nation Working Group on Indigenous Populations state, *inter alia*, that:

- *To be effective, the protection of Indigenous peoples' heritage should be based broadly on the principle of self determination, which includes the right of Indigenous peoples to maintain and develop their own cultures and knowledge systems, and forms of social organisation.*
- *Indigenous peoples should be the source, guardians and the interpreters of their heritage, whether created in the past, or developed by them in the future.*
- *The discovery, use and teaching of Indigenous peoples' heritage are inextricably connected with the traditional land and territories of each people. Control over traditional territories and resources are essential to the continued transmission of Indigenous peoples' heritage to future generations, and its full protection.*

Australia has a responsibility to recognise and protect the distinct enjoyment of rights by Indigenous people in order to protect activities central to cultural survival. This obligation to Indigenous peoples arises from the Crown's power to regulate and



extinguish rights. Australia cannot choose the degree to which rights will be recognised. Positive measures to provide minimum standards for the protection of the distinct rights of Indigenous peoples are required by international law.<sup>27</sup>

### **Relationships with particular species of flora and fauna**

With the degradation of the Murray River, many native plants and animals are disappearing. The Indigenous Nations will emphasise the cultural and spiritual importance of particular species, many of which are at risk or have abandoned their traditional country. This may take the form of hunting for particular rituals or ceremonies, but may extend to the assertion of an exclusive right to harvest, or priority, or a right to protect the species. The relationship with such species requires protection and revitalisation.

### **Sites of significance**

Throughout the consultations, the Indigenous Nations asserted their right to access and control access by others to sites and places of significance. They also emphasised a right to protect unauthorised or inappropriate use of such sites and places, and a right to control and manage the transfer of cultural knowledge about these places. This may involve the management of flows and effects of flooding.

Such rights should not be understood simply within the sphere of spiritual importance but extend to other cultural and heritage concerns of access and may, for example, embrace the commercial advantage received from protecting prime harvesting areas, for example, just as commercial advantage should be recognised as a legitimate objective in maintaining and protecting knowledge about those places.

Consultation and protection measures are imperative in assessing the impact of changing flows on the important cultural sites of each Nation in any plan to return water to the Murray.

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<sup>27</sup> International Covenant on Civil and Political rights, Art. 27.

## **The right to a cultural flow**

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### **Preserving the cultural economy**

In order to enjoy rights such as fishing rights, or more general cultural and economic rights central to the maintenance of Indigenous Nations cultural traditions, it is first critical to have a healthy river system. The degradation of the river system has threatened these pendant rights.

The Indigenous Nations of the Murray have identified the interrelationship between these elements as the need to preserve the cultural economy through the identification of cultural flows. That is, sufficient environmental, social and economic water flows and volumes must be allocated to the River and to Indigenous Nations to sustain the cultural economy of each Nation in the River system

## The right to equal enjoyment of human rights

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Local Indigenous communities have grown around missions reserves and regional and rural labour markets. Unlike the broad rural demographic trends of rural-to-urban decline and an ageing population, the Indigenous Nations are staying on their land, and the Indigenous Nations and Indigenous communities have growing, young populations.

In addition to the issues that the Indigenous Nations share with the broader rural community, the history of colonisation and the effects of institutionalised and overt racism have resulted in Indigenous peoples in Australia remaining the most disadvantaged groups in Australia.<sup>28</sup> The river is critical to their health and welfare; a lack of supply of clean water is linked to high morbidity and mortality rates. Overcoming historical disadvantage in the provision of services and infrastructure and the future development of growing local Indigenous communities and Nations should be incorporated into planning objectives.

Indigenous peoples should not have to call for a right to the equal enjoyment of fundamental rights such as clean drinking water, or adequate and safe domestic water supplies. However, this human rights and citizenship issue, is one that was highlighted in the final report. Clearly, communities along the river feel they do not enjoy access to infrastructure that can deliver a basic level and standard of healthy water supply.

Communities need a clean and reliable water supply. Water should be clear and drinkable. A priority of the *Living Murray Initiative* should be to ensure sufficient quantities and quality of water for human consumption. The healthy river outcomes sought by the Indigenous Nations to sustain their communities, will sustain other communities along the river.

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<sup>28</sup> See, Steering Committee for the Review of Government Service Provision, *Overcoming Disadvantage: Key Indicators – Report*, 2003.

## Recognition in domestic legislation and policy

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The exercise of rights and responsibilities under Indigenous law is rarely supported by express recognition within the non-Indigenous legal system. However, state land rights regimes, customary fishing and hunting reservation and, of course the *Native Title Act* have either explicitly or implicitly acknowledged the fact of Indigenous occupation of traditional country and the continuing cultural authority of those communities.

### Native title

In *Mabo v Queensland [No. 2]* the High Court determined that Indigenous peoples should be treated equally before the law with regard to their rights over their traditional country.<sup>29</sup> The Court rejected any position in law that would discriminate against Indigenous peoples by denying the existence of rights that had been enjoyed freely prior to colonisation and continued to be exercised.

Native title was described as *sui generis*, or unique, because it reflects the rights and entitlements of Indigenous peoples under their own laws. The rights and laws that are recognised through native title do not depend on government for their existence, but they did require recognition through the common law in order to be enforceable in the Australian legal system.

The *Native Title Act* refers to the ‘land and waters’ as a single proposition. Determinations of native title have similarly undifferentiated land and waters in the determination area. In areas where exclusive native title is recognised, native title holders have extensive rights over the land including full rights of ownership, management and economic exploitation.

Even where native title is not exclusive, due to the impact of extinguishment and coexisting tenures, a number of native title determinations have recognised exclusive and non-exclusive rights over waters within the determination area as well as

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<sup>29</sup> *Mabo v Queensland [No.2]* (1992) 175 CLR 1 (*Mabo*)

specific rights, enumerated in the determination. For example, native title has been recognised to include, among other things:

- The right to use and enjoy the land and waters of the determination area
- The right to take water,
- The right to fish,
- The right to control use by others, and,
- The right to protect places of significance, including sites under water.

In 1998 the Commonwealth government moved to restrict the procedural rights available to native title holders under the Act to in relation to developments concerning rivers and waterways. Section 24HA provides that a future act in relation to the management or regulation of water is a valid act, including legislation, regulations plans of management or licences granted.

Native title claimants and holders are entitled to be notified and given an opportunity to comment. Where native title interests are affected the native title holders may receive compensation. It has been noted that the sanctions for failure to consult are insufficient.<sup>30</sup>

### **Other legislative protections**

Responsibility for the management of inland waters and waterways rests primarily with the States. While the Commonwealth Parliament does not have an express power to make laws for the management of inland waters, increasingly State and Territory laws and policies in relation to waters are being guided by international law and national policies. COAG is the principal forum in which these national policies are developed and implemented.<sup>31</sup>

Only New South Wales and, to a lesser extent, Queensland legislation contain provisions dealing with distinct Indigenous

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<sup>30</sup> *Harris v Great Barrier Reef Marine Park* [2000] FCA 603 (11 May 2000).

<sup>31</sup> Indigenous Rights to Water Report: Lingiari Report to ATSIC, draft.

interest in waters (*Water Management Act 2000* (NSW); *Water Act 2000* (Qld)). This lack of legislative recognition is reflected in the water allocation plans currently being developed or implemented in most Australian jurisdictions.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) provides some protection for Indigenous rights in water. The Act has as its definition of ‘significant Aboriginal area’: an area of land in Australia or in or beneath Australian waters; an area of water in Australia; or, an area of Australian waters. Heritage protection for Indigenous places of national significance is provided under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).<sup>32</sup> State heritage legislation also provides protection. These statutory authorities enforce management responses to cultural heritage concerns in the Murray Darling Basin, such as at Lake Victoria.

Indigenous rights to fish in the Murray Darling Basin are recognised by the Commonwealth *Native Title Act*, and by New South Wales and Queensland state legislation. In NSW Indigenous people are exempted from holding recreational fishing licences (*Fisheries Management Act 1994* (NSW) s.34C); in Queensland Indigenous people may take fish under Indigenous tradition (*Fisheries Act 1994*, s.14). Indigenous people also have hunting and gathering rights under most national parks legislation.

### **The limits of existing regimes**

The Court in *Mabo* recognised that Indigenous peoples’ rights to land exist outside common law or legislative recognition, but the judges specifically asserted that the State has power to extinguish native title unilaterally, without consent or recompense.<sup>33</sup> Recent cases have restricted the number of Indigenous peoples who will have access to native title as a means to protect their inherent rights or to enforce their traditional laws. The wholly or partially

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<sup>32</sup> This Act purports to implement Australia’s obligations under the Convention on Biodiversity, articles 8(j) and 10(c).

<sup>33</sup> *Mabo v Queensland [No. 2]* (1992) 175 CLR 1, at pp. 68-74, per Brennan J; pp. 94, 100, per Deane and Gaudron JJ (although compare p. 92); and pp. 194-5, per Toohey J.

extinguishing effects of historical tenures will be particularly devastating for Indigenous peoples of the South East of Australia.

The extent of extinguishment and the limits that have been built into the legal doctrine of native title suggest that native title should not be the only benchmark for the engagement of Indigenous Nations. Just as the recognition of native title in 1992 revealed the inadequacies of existing regimes such as heritage protection, so too, emerging models of engagement outside the native title process highlights the limits of the native title regime in being able to adequately address the rights of Indigenous peoples over their traditional territories.

The existence or otherwise of native title does not determine the legitimacy of Indigenous peoples claims to be involved in decision-making and the protection of their cultural heritage and their land and waters.

Government obligations go further than the preservation of native title rights and compensation for potential impacts on native title rights and interests.<sup>34</sup>

- That the MDBC and the Ministerial Council develop legally binding agreements/protocols with Indigenous Nations, according to their traditional boundaries. The agreements/protocols should establish a framework for involvement by the Nations in management of the Basin's natural resources
  - That the MDBC and the Ministerial Council ensure Indigenous Nations are represented on all natural resource management bodies in the Basin and centrally involved in their policy and management decisions
- Recommendations of the Indigenous Response Final Report*

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<sup>34</sup> *The case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua* Inter-American Court of Human Rights, August 31 2001.

## Non-discrimination principle

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The *Racial Discrimination Act 1975* (Cth) (RDA) has proved important in providing protection for Indigenous peoples' individual as well as collective rights. The High Court in *Mabo* determined that although in the past domestic law allowed governments to deal with Indigenous peoples in a discriminatory manner, the RDA, from the time it was passed into legislation, created an obligation on governments to deal with Indigenous interests in a non-discriminatory manner. Governments must therefore exercise their power to deal with property in a manner consistent with the RDA.

The RDA reflects international law principles of equality and non-discrimination that require a more contextualised understanding of equality and what is necessary to secure the enjoyment of human rights for Indigenous peoples. In its General Recommendation XIV (1993) the CERD Committee explained that a distinction for the purposes of Article 1 of CERD 'is contrary to the Convention if it has either the purpose or effect of impairing particular rights or freedoms' or has an 'unjustifiable disparate impact upon a group distinguished by race, colour, descent or national or ethnic origin'.

This relies on three distinct measures of equality. The first is formal equality which requires that human rights be enjoyed without arbitrary or unjustified distinction. The second embodies the positive duty to eliminate systematic, institutionalised or historical disadvantage.<sup>35</sup> The third is the concept of substantive equality, which recognises that differential treatment is not necessarily discriminatory if it is legitimate, that is recognising legitimate difference or distinct rights.

At a minimum, the same protection, such as Constitutional guarantees of just terms for compulsory acquisition of property,

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<sup>35</sup> Overcoming systemic disadvantage is a positive duty. Article 1(4) specifically refers to 'special measures' or affirmative action aimed at advancing disadvantaged groups or redressing past injustice or systematic or institutionalised discrimination for the purposes of ensuring the equal enjoyment of human rights.



which apply to non-Indigenous interests must also apply to Indigenous peoples' interests. More appropriately, it would require specific measures that recognise the distinct cultural importance of particular traditional lands to the Indigenous owners.

Apart from invalidating acts that discriminate, the RDA also has an effect where the operation of the legislation is racially discriminatory in its treatment of Indigenous peoples' interest in the recognition of rights, for example in the provision for compensation.

## Reparations and compensation

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Indigenous people are land holders., Despite the history of dispossession, Indigenous Peoples have managed to maintain or regain control over portions of land and waters within their traditional territory and maintain an interest in the management of the remainder. The colonisation of Indigenous peoples' country in the 1800s resulted in the occupation of much of their traditional lands and waters. The redistribution of this land to other interests has meant that Indigenous peoples became the most disadvantaged in relation to land holding. This severely restricted the ability of Indigenous Nations to establish an economic base from the land.

In native title, legislative amendments have assumed that any diminution of Indigenous peoples ability to exercise their traditional rights over land, through extinguishment of native title, could be dealt with by providing for compensation. To this end, the principles of non-discrimination were suspended to ensure that the state and Commonwealth governments could 'validate' past titles and interests and confirm the right of government to ignore Indigenous interests in other circumstances. This was deemed acceptable so long as provisions were made for compensation.

Compensation is a remedy of last resort in relation to Indigenous peoples' traditional lands and waters. Only where it is impossible to protect or return lands should compensation be considered, and then, it should be considered in the form of land and waters before monetary compensation.<sup>36</sup>

In *Ward v Western Australia*,<sup>37</sup> the High Court of Australia compared Indigenous interests as native title holders with other existing legal interests. They found a number of circumstances in which Indigenous interests had not being treated equally. For example, almost all national parks in the Northern Territory have come under question as a result of the Territory government's

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<sup>36</sup> The NTA accepts this principle at least, providing for non-monetary compensation to be considered. [ref]

<sup>37</sup> *State of Western Australia v Ward* [2002] HCA 28 (8 August 2002).

failure to treat Indigenous people as occupiers with an interest in land.

Where new rights and interests are being created based on utility or actual use, as is being discussed by the current water reforms, then Indigenous interests should be considered in terms of equal treatment, unique rights and reparations for historical wrongs and ongoing disadvantage. If governments fail to take into consideration Indigenous rights to water, then they fail to provide a robust basis for the development of the water reforms, exposing governments to later reparations.<sup>38</sup>

Cultural use and lost utility should be taken into consideration in determining compensatory regimes under the *Living Murray* project. The allocation of water for cultural flows can be seen as reparation for past dispossession of water and impacts on cultural rights.

### **Sustainability and the precautionary principle**

The precautionary principle is a key principle of ecologically sustainable development, applied when there is scientific uncertainty and the possibility of serious damage to environment. The idea behind the principle is that appropriate action needs to be taken to avoid the risk of any serious and irreversible damage to the environment. The precautionary principle is applicable in all spheres of human activity and should be applied to decisions which affect the capacity of Indigenous Nations to continue living on their lands and waters.

The precautionary principle should be applied when making decisions on the impact of returning water to the environment. The implications of failing to return health to the river system has a disproportionate impact on Indigenous peoples' relationship with the Murray as it is linked to their cultural and spiritual identity and their status as first and last peoples of the Murray River.

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<sup>38</sup> See further Altman, Jon, and Michelle Cochrane, *Indigenous Interests in Water: A comment on the 'Water Property Rights – report to COAG from the water CEOs group' discussion paper*.

## Outcomes and mechanisms

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### Indigenous priority in water allocation

State legislative regimes often reserve rights of Indigenous peoples to continue customs and practices of fishing hunting and foraging. Section 211 of the *Native Title Act* exempts native title holders from licensing or other regimes for fishing and hunting. The provisions create a statutory priority for native title rights over regulatory legislation.<sup>39</sup> Under s.211, the exercise of rights pursuant to native title is only trumped by research, environmental and public health and safety legislation. This raises an important principle in determining the impact of outcomes adopted by the *Living Murray* project and the objective of measures to meet these purposes.

In Canadian Courts similar issues of priorities have arisen. In that jurisdiction it is recognised that Indigenous non-commercial rights are prioritised above all non-Indigenous interests but are subject to legitimate environmental and conservation measures. It has been held that conservation measures could be justified to take priority over Aboriginal rights because they are inherently consistent with the protection of the environment for future generations and the maintenance of the underlying connection that sustains the distinct cultural identity of the group.<sup>40</sup>

Importantly, the Canadian Courts placed an emphasis on Indigenous peoples' direct involvement in conservation management. The Courts have held that a legitimate legislative objective of conservation overriding Indigenous interests is only met where Indigenous people had been consulted (and not just informed) and, moreover, were unable or unwilling to implement appropriate measures themselves. In addition, the test assumes that conservation objectives could only be achieved by restricting the rights of Indigenous peoples and not by restricting other users. The Aboriginal right takes precedence over the rights of others

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<sup>39</sup> and presumably Commonwealth legislation unless later legislation which is clearly inconsistent and overriding the Native Title Act.

<sup>40</sup> *R v Sparrow*, op.cit

and should be occasioned as little interference as possible to achieve the regulatory objectives.<sup>41</sup>

Section 211 and other provisions in state legislation recognise, although perhaps inadequately, the legitimate priority of Indigenous interests over other interests in relation to fishing and hunting for personal or communal use. However, Indigenous peoples will seek the same respect for their pre-existing rights in the future allocation of resources, licences and other interests.

➤ *Water allocation rights*

For the Indigenous peoples of the Murray River, water resources provide an opportunity for developing and participating in rural industries. Water allocation rights can mean inclusion in the water trading environment for economic development opportunities, or for achieving cultural and environmental objectives by allocating water for cultural or environmental flows.

The creation of new water property rights without recognition of Indigenous rights in the water denies the existence of those rights, and denies the future participation of Indigenous people in the water property regime. The potential exists for a positive contribution to Indigenous economic development.

The allocation of water directly to the Indigenous Nations and/or local Indigenous communities is the most appropriate model. A generic water trust or provision for affects on native title rights and interests would be unlikely to achieve the objectives of self-management and economic development.

Further work could be done to determine a baseline requirement for cultural flows of each Nation which could be used to determine future allocations and return of waters to the 'environment' or directly to Indigenous Nations as actual use allocations or compensation, in accordance with the priority set out above.

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<sup>41</sup> This priority is not dependent on Constitutional protection (see *Jack v R.*). Nor is it dependent upon aboriginal title.

The allocation of water directly to Indigenous Nations and/or local communities serves a number of purposes:

- Preservation of current domestic, cultural, and economic use;
- Redressing lost utility and dispossession;
- Purchasing ‘eco-cultural services’;
- Reinforcing self-management;
- Protecting future cultural development;
- Facilitating economic development; and
- providing for community growth.

Keeping in mind the principles of engagement with Indigenous Nations, flows and allocations should be determined on a Nation to Nation basis.

➤ *Co-management*

Australia is internationally recognised for its co-management arrangements with Indigenous people for the National Park Estate and areas of World Heritage.<sup>42</sup> Frameworks are currently being developed for a co-management regime with the Great Barrier Reef Marine Park Authority. Co-management provides a model for partnership between governments and the Indigenous Nations of the Murray. Co-management of water resources in the Murray River could provide a mechanism for negotiating responsibilities to water.

Co-management could be linked in with river protected areas, where parts of the river could be protected for the purpose of restoring the native fish and vegetation, or co-management could cover the environmental and cultural objectives of managing the water resources of the Murray. MDRIN have proposed a co-management model that would see Cultural Heritage Management Protocols negotiated separately with each Indigenous Nation, working under an umbrella agreement for the region. The importance of co-management arrangements for Indigenous peoples are recognised by the Royal Commission on Aboriginal

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<sup>42</sup> [ref]

Deaths in Custody, which recommended greater Indigenous control over Indigenous cultural heritage through the joint management of national parks.<sup>43</sup>

- That the MDBC and the Ministerial Council develop Cultural Heritage Management Plans (CHMPs) with Indigenous Nations, according to their traditional boundaries
- The CHMPs should be incorporated into all relevant natural resource plans and local council development plans

*Recommendation of the Indigenous Response Final Report*

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<sup>43</sup> Recommendation 315.

## Policy context

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The engagement between Indigenous Peoples and the Murray Darling Basin Commission in relation to the *Living Murray Initiative* should be considered in the light of broader policy reforms within the Commission. There are some positive developments within the CAC, the MDBC and the Ministerial Council which is set to provide the processes and frameworks to give recognition of the unique and diverse governance of the Indigenous Nations. These processes will allow for the development of special measures; to set out procedures for negotiated agreements, to be represented, to facilitate adequate representation and to gain the informed consent of the Indigenous Nations to be centrally involved in policy and management decisions on natural resources within the Basin.

### Memorandum of Understanding

#### *Development of General Frameworks and Processes*

As a response to the Memorandum of Understanding between the Murray Darling Basin Commission and the Murray Darling Rivers Indigenous Nations general frameworks and processes will be developed to enable each of the Indigenous Nations within the MDRIN to reach understandings and agreements with MDBC and its *Initiative Partners*.

These Agreements may include, but are not limited to:

- Agreement as to representation, participation and engagement in the process of natural resource management
- Cultural heritage protocols
- Native title agreements and procedures; and
- Social and economic outcomes

#### *Scope of MDRIN coordinated activities*

In forming a confederacy of Nations for the purpose of engaging with the MDBC, the Nations of the Murray have recognised that,



while respecting the diversity among themselves, certain issues can be and are best dealt with through a coordinated approach. Recognising that specific projects, resourcing and priorities would be need to be identified and negotiated directly with the each Nation, activities that would benefit from coordination through MIDRIN include, but are not limited to:

- *Nation Profiles* – collating essential information that establishes the demographic profile and identifies the environmental, economic and cultural issues of importance to each Nation.
- *Traditional Nation boundaries* – respond to the need expressed by Nations for better definition of the traditional boundaries of the Basin’s Nations in order to reduce disputation and clarify responsibilities.
- *Skills and governance audit* – identifying appropriate processes and support required on a Nation-by-Nation basis to enhance internal governance structures;
- *Development of Cultural Maps and Plans of Management on Indigenous Cultural and Environmental Heritage for each Nation* – developing a plan of action that will promote the sustainable use of natural resources in the homelands of each Nation, recognising that economic and social outcomes are integral to achieving environment and cultural heritage management outcomes.
- *Vision and goals* –to develop a vision statement and define processes for MDRIN that are informed by developing capacity, governance and leadership within each Nation.

The development of Nation profiles and development of governance structures based on each Nation’s traditional cultural and environmental heritage assets can provide a firm basis for negotiating better outcomes and place Indigenous Nations in a position to clearly inject their views, values and priorities into government policies and plans for natural resources management and regional development.

### **Integrated Catchment Management**

MDBC Integrated Catchment Management Business has also approved the development of:

- An Indigenous Action Plan, and
- Indigenous Leadership, Governance and Capacity Building

*The COAG Reconciliation Commitment and the Indigenous Action Plan to Advance Indigenous Engagement 2003-05*

The Murray-Darling Basin Ministerial Council in 2002 resolved to develop an Indigenous Action Plan in response to its adoption of the COAG Reconciliation Commitment. In the same year the MDBC commissioned the Bellamy Report which provided an integrated overview of State reviews of Integrated Catchment Management from across Australia and an analysis of potential lessons for the implementation of Integrated Catchment Management in the Murray Darling Basin.

The planned outcomes from this project are:

- A detailed report on the progress of Indigenous engagement for consideration by the MDB Ministerial Council to satisfy the reporting requirements detailed in the COAG Reconciliation Commitment;
- The development of policy and benchmarks as practical means to measure progress and enable the Ministerial Council to review the advancement of Indigenous engagement. This includes performance reporting strategies, accountability, monitoring and key indicators;
- A synergy between Indigenous Action Plans across the Ministerial Councils, with responsibility for Indigenous natural and cultural resource management, to coordinate how the priority areas outlined in the COAG Reconciliation Framework are addressed;
- The collection of data to develop Indigenous profiles to gain understanding of the dynamics of Indigenous peoples within the Basin to inform Commission processes.
- The generation of knowledge to inform and add-value to existing programs and activities;

- The provision of information for the MDBC and government agencies to evaluate Indigenous service requirements and to underpin the re-engineering or re-structuring of existing programs and activities;

*Leadership, Governance and Capacity Building Project 2003-05*

To ensure that engagement between MDBC and the Indigenous Nations is meaningful and meets the aspirations and goals of each of the parties, the MDBC has committed resources to support the development of leadership and governance within Indigenous Nations. The desired outcomes of this project are to empower Indigenous peoples to actively participate in natural resource management through the development of culturally appropriate concepts of governance, capacity building and leadership within the Indigenous Nations of the Murray-Darling Basin. The project aims to:

- Enhance the capacity for Indigenous peoples to meet the challenge of defining and developing Indigenous governance and leadership processes endemic to their traditional country within the Basin
- Invest in Indigenous peoples to be self-determining and empowering them to inform policy, develop and implement tradition-based strategies and knowledge into the conservation of biodiversity, cultural heritage and natural resource management and into the framework of ICM.
- Provide culturally based learning modules for Indigenous peoples to assist them to develop and implement cultural and environmental management plans, which would provide a vehicle in developing capacity, governance and leadership that is based on traditional knowledge and informed technical and scientific knowledge.
- Assist in the development of a skills audit of people held within each Indigenous Nation

- Invest in infrastructure that supports Indigenous peoples beyond this project
- Establish cross-linkage between the Indigenous Action Plan, MDRIN MoU, The *Living Murray Initiative* and all MDBC Integrated Catchment Management projects.

These initiatives respond to the procedural rights of Indigenous peoples to be meaningfully involved in decisions affecting their country. They should be underpinned by principles of self-determination of individual Nations and a recognition that this process involves something more than mere consultation.

## **Further Action**

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This discussion paper was developed to provide input to the immediate processes of the *Living Murray Initiative*, and to support the recommendations of the Indigenous Response, by placing their recommendations in a policy framework. Many of the recommendations from the Indigenous Response to the Living Murray Initiative 2000 are addressed within the body of this discussion paper. Two key recommendations should be highlighted as they are central to the next stage of the Living Murray process as the community consultations are considered and the decisions of the MDBC Ministerial Council are implemented.

### **Recognising the distinct rights and interests of Indigenous Nations in the Murray Darling Basin and the reforms**

The Indigenous Nations have called for the issues, concerns, values and aspirations of Indigenous peoples be placed on the MDBC Issues Log of the broader community engagement process and be considered by the MDBC and the Ministerial Council.

- Recognising the need for justice
- Establishing a package of rights
- Development of reparation and compensation
- Embracing Indigenous Nations self determination
- Development of an economic base for Indigenous Peoples
- Ensuring cultural and environmental heritage protection measures

### **Establishing principles and processes for engagement with Indigenous Nations**

The Indigenous Nations also sought commitment from the MDBC that they will proceed with the three-stage Indigenous Engagement Project detailed in the Feasibility Study and provide necessary resources to enable;

- further consultation and negotiations around the current reference points for environmental flows so healthier outcomes for the river are possible
- establishment of a culturally appropriate process for assessing the social, cultural, economic and environmental impacts of any decision on the Indigenous Nations and Indigenous Peoples generally;
- allow for further clarification of the rights of the Indigenous Nations Rights to Water; and
- that the Ministerial Council and the MDBC receive a delegation from the Indigenous Nations to allow clarification and discussion to the Ministerial Council meeting of October 2003.

While the October 2003 deadline has passed, and initial decisions have been taken in relation to the *Living Murray Initiative*, there is an ongoing need to address these recommendations and to urgently incorporate Indigenous Nations and Indigenous community concerns within the current reform process that will establish the principles and details of engagement between MDBC and Indigenous peoples. The Indigenous Engagement Project is an investment in the future management of the Murray Darling Basin. Time and effort invested in appropriate processes at this time will result in tangible benefits for future decision making. These processes of engagement must, however, remain linked to the recognition of distinct rights and delivery of measurable outcomes for Indigenous Nations.

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# Appendix

## **Report to the Murray Darling Basin Commission**

### **Indigenous Response to the Living Murray Initiative**

**April 2003**

## **Introductory Note**

Please note: This is a report commissioned by the MDBC to detail Indigenous responses to The Living Murray.

The contents of this publication do not purport to represent the position of the Murray-Darling Basin Commission.

The intention of this paper is to inform discussion for the improvement of the management of the Basin's natural resources.

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## Part 1      Executive Summary

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### 1.1      Background

The Murray Darling Basin Ministerial Council agreed to the following vision for the River Murray in March 2001 – “*a healthy River Murray system, sustaining communities and preserving unique values*”.

In April 2002, the Ministerial Council:

1. agreed to hold a community-wide consultation process about environmental flows, beginning in April 2002;
2. directed that a comprehensive study be done on the costs and benefits to the environment and the community of returning water to the environment;
3. recognised a need to spend \$150 million on modifying dams, weirs and locks and other measures to make best use of all the water currently available to the environment; and
4. recognised the importance of establishing water trading arrangements for the efficient allocation of the scarce water resources of the Basin and that the effectiveness of these arrangements will depend on clear definition of access rights to water.

The Murray Darling Basin Commission (MDBC) is to report to the Ministerial Council on community engagement. It wants to determine the community’s knowledge, values, aspirations, issues information needs and concerns in relation to the vision of the Ministerial Council.

The MDBC has commissioned this report to detail Indigenous responses to these matters.

In compiling this report, the Farley Consulting Group (FCG) has worked in conjunction with MLDRIN.

This report is required to:

1. identify the range of issues, concerns, values and aspirations raised throughout the consultations, including knowledge gained from consultations undertaken by MLDRIN;
2. outline the geographical scope, representation and interests covered in the consultations;
3. provide direction for the broader community engagement strategy to address any issues relating to engagement and communication requirements for Indigenous communities.

## **1.2 Introduction**

The Murray Darling Basin Ministerial Council is asking the community to discuss the best way to achieve its vision of “a healthy River Murray system, sustaining communities and preserving unique values”. The Murray Darling Basin Commission (MDBC) is to report on community engagement to the Ministerial Council.

### **1.2.1 Feasibility Study**

An initial Feasibility Study was undertaken by MLDRIN and FCG in October 2002. The Study was accepted by the MDBC in December 2002.

The Feasibility Study identified the need for a two-stream approach:

- one by MLDRIN to engage Traditional Owners/Nations through workshops;
- one by the FCG to engage other Indigenous people and organisations through public forums.

The Feasibility Study also identified the need for a three-stage Indigenous Engagement Project:

- stage 1 to report on issues, concerns, values and aspirations;
- stage 2 to inform the community of Ministerial Council responses to stage one, consider social and economic impact research, and gather subsequent community reactions;
- stage 3 to advise the community of actions that will be taken by government.

## **1.2.2 Community Engagement Process**

Indigenous responses were gathered in two streams:

- workshops with Traditional Owners/Indigenous Nations;
- public forums to enable input from other Indigenous people and organisations.

Responses from the two streams are remarkably consistent.

The central themes are:

- 1. Shared Vision**
- 2. Recognition,**
- 3. Respect for country,**
- 4. Involvement**
- 5. Policy Change**

### **1.2.2.1 Shared Vision**

The vision for the River Murray is one of a healthy, living river system with natural flows and cycles.

It is essential that the visions of Indigenous Nations are accepted in holistic terms. It is also important to note that while the visions of Indigenous Nations could be the same or similar, they will also be independent due to the inherent cultural diversity of each Nation in relation to traditions, sites, stories and cultural practices.

Such diversity is not confined to Indigenous Nations – it is reflected in the different approaches and priorities of States and Territories within the Commonwealth system.

Management of the River Murray needs to incorporate a range of outcomes including those listed below:

- Healthy
- Free flowing
- Alive
- Natural cycles
- Restocked
- Revegetated

- Access rights for Indigenous people so they can move freely to continue cultural practice
- Traditional fishing/hunting
- Indigenous people and Nations recognised and respected for what and who we are
- The rivers and tributaries are respected and cared for
- Indigenous Nation recognised as sovereign entities in their own country.

### **1.2.2.2 Recognition**

Distinct rights exist for Indigenous peoples as part of their rights to self-determination. These rights should be recognised as inherent and holistic. They are:

- Customary rights of Indigenous Nations along the Murray Darling system; and
- Human rights to maintain a cultural economy

Customary rights relate to cultural self-determination and the preservation of distinctive cultural identities.

Human rights to maintain a ‘cultural economy’ relate to Indigenous Nations being able to undertake activities that secure sustainable capital from the natural resources that traditionally and historically belong to each Nation.

### **1.2.2.3 Respect for Country**

Indigenous peoples clearly identified concerns about the lack of respect not only for themselves, but also for the natural resources of the country.

The river system must be treated with respect, as it is the lifeblood of the country. If the river is in poor health, it can not provide spiritual, cultural, economic and social benefits to all those who depend on it.

The basis of management of the river system must be a whole landscape approach, including all tributaries of the River Murray. The objective for management of the river’s resources must be **sustainable use** with the core values of the river system preserved as a legacy for future generations.

To fully respect the river and all adjoining systems, the mouth of the River Murray should be open. This can only occur if the needs of the river are respected - it effectively means increasing natural flows, bringing back native fauna and flora and eradicating introduced species such as carp and willow trees.

#### **1.2.2.4 Indigenous Involvement**

The community engagement process highlighted quite clearly that Indigenous people want to be actively involved at all levels of management of natural resources throughout their traditional lands.

The initial building block for involvement by Traditional Owners should be protocols with Indigenous Nations about how they wish to do business with government and the general community on management of natural resources.

The draft Memorandum of Understanding between the MDBC and the Murray and Lower Darling Rivers Indigenous Nations (MLDRIN) is a starting point and should be endorsed by the MDBC, the States on the Ministerial Council and the ACT.

Cultural Heritage Management Plans (CHMPs) then should be developed between government and Indigenous Nations with custodial responsibilities for the river system. The CHMPs should have the force of law and reflect the inter-relationship between environmental values and spiritual and cultural values.

#### **1.2.2.5 Policy Approaches**

The consultations raised a number of issues about the policy approaches used by government for management of the river system and the role of Indigenous people in the policy development process.

There was a clear view that cultural, environmental and social values should be given equal status with economic values when policy and management decisions are made. This would require the development of new indicators and changes to the structure of water pricing in the Basin.



It also was very clear that Indigenous Nations believe they have rights to be engaged and involved, and wish to be engaged and involved, at all levels in the management of the river system.

### **Water allocations to provide for cultural economy**

There was a widely held view that a water allocation should be available to each Indigenous Nation to enable them to exercise their custodial responsibilities to care for the river system. Each Nation would decide whether its allocation should be used to increase environmental flows or to help generate a more independent economic base for their people. The decision would be taken in the context of the health of the river system and their custodial responsibilities.

At the same time, there should be initiatives to encourage more efficient use of water. This would entail public investment in incentives and assistance for industry and other water users to change management systems.

### **Compensation**

Indigenous people reject the concept of compensation for any loss of water allocations by industry as inequitable, given the legislative history of Australia that prevents Indigenous Nations from having any rights to water.

The spiritual, cultural, economic and social health of Indigenous peoples depends on the health of the river system. If the system is unable to provide such support, many Indigenous people believe there is a basis for compensation for loss of traditional values.

### **Environmental flows**

Indigenous people believe the policy objective must be to restore natural flows and cycles to the river system. The current reference points determined by the Ministerial Council for increased environmental flows are unsatisfactory. Even the top reference point has only a low to moderate probability of restoring the health of the river system.

Indigenous people also believe management of the river system's resources should be made more efficient. This may entail additional public investment in infrastructure.

Indigenous people are frustrated that the Ministerial Council has been unable to achieve a whole of government approach to management of the Basin's natural resources.

### **Indigenous Intellectual Rights**

Indigenous people want traditional knowledge recognised for the contribution it can make to resource management and as an Intellectual Property Right.

They believe there should be comprehensive public education campaigns so the community has a better understanding of what is required for sustainable resource use and of the central importance of country to Indigenous culture and spirituality.

### **1.3 Recommendations**

1. That the issues, concerns, values and aspirations of Indigenous people:
  - be placed on the Issues Log of the broad community engagement process;
  - be considered by the MDBC and the Ministerial Council.
2. That the Ministerial Council and the MDBC receive a delegation from Indigenous Nations to allow discussion of the issues.
3. That the MDBC proceed with the three-stage Indigenous Engagement Project detailed in the Feasibility Study and provide necessary resources.
4. That the MDBC provide a forum for Indigenous Nations to come together to determine their position on natural resource management issues and continue to provide support for MLDRIN in this respect.
5. That the MDBC and the Ministerial Council develop legally binding agreements/protocols with Indigenous Nations, according to their traditional boundaries. The agreements/protocols should establish a framework for

involvement by the Nations in management of the Basin's natural resources.

6. That the MDBC and the Ministerial Council ensure Indigenous Nations are represented on all natural resource management bodies in the Basin and centrally involved in their policy and management decisions.
7. That the MDBC and the Ministerial Council ensure that cultural, environmental and social values are given equal weight with economic values in policy and management decisions and water pricing in the Basin.
8. That the MDBC and the Ministerial Council develop Cultural Heritage Management Plans (CHMPs) with Indigenous Nations, according to their traditional boundaries.
9. The CHMPs should be incorporated into all relevant natural resource plans and local council development plans.
10. The CHMPs must be implemented by the respective Indigenous Nations, according to their boundaries, and provide employment for Indigenous people. They also should provide access for Traditional Owners to sites and areas of significance and for hunting and fishing.
11. That the MDBC and the Ministerial Council provide a water allocation for each Indigenous Nation.
12. That the MDBC and the Ministerial Council extend the current reference points for environmental flows so healthier outcomes for the river are possible.
13. Resources are essential to enable equitable engagement by Traditional Owners in natural resource management. Resources will be necessary for negotiation, training, capacity building, and support for Traditional Owner representatives.
14. Cross-cultural training should be undertaken at all levels of government and by natural resource management bodies.

## Part 2 Community Engagement Process

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### 2.1 Introduction

#### *Project Management*

A project Steering Committee was established to oversee the project. It comprises two MLDRIN representatives, one representative of the Community Advisory Committee to the Ministerial Council, and one representative from the office of the MDBC.

The Steering Committee identified where workshops and public forums should be held.

#### *MLDRIN Traditional Owner Group Coordinators*

MLDRIN appointed three coordinators to work with the MDBC and FCG. Each coordinator was given responsibility for consultation with particular Nations.

MLDRIN coordinators held workshops with the following Traditional Owners:

- 12 December 2002 in Murray Bridge – Ngarrindjeri, Kaurna and Peramangk Nations;
- 18 December in Swan Hill – Wamba Wamba and Wadi Wadi Nations;
- 20 December in Albury – Wiradjuri Nation;
- 24 January in Barmah – Yorta Yorta Nation;
- 28 January in Deniliquin – Wamba Wamba Nation;
- 1 February in Balranald – Muthi Muthi Nation;
- 5 February in Robinvale – Mungatanga Elders
- 9 February in Menindee – Barkindji and Nyiamppa Nations.

#### *Public Forums*

Public forums were held by FCG on:

- 5 February in Murray Bridge;
- 7 February in Buronga
- 9 February in Menindee
- 12 February in Swan Hill

- 14 February in Albury.

### *Community & Public Awareness Strategy*

The public forums were advertised in:

- Koori Mail;
- National Indigenous Times;
- Murray Valley Standard;
- Sunraysia Daily;
- Barrier Daily Truth;
- Swan Hill Guardian;
- Albury Border Mail.

In addition, invitations to the public forums were faxed/mailed to 60 Indigenous organisations, based on lists provided by the MLDRIN coordinators.

The MDBC made a presentation on The Living Murray initiative to each workshop and public forum.

### *MLDRIN Community Fact Sheet*

A MLDRIN fact sheet and brief was tabled at each workshop and public forum and a MLDRIN representative presented their views.

The following standard questions were put to each workshop and public forum:

*What is your vision for the River Murray?*

*What is the significance of the River Murray to you?*

*What are the values that should be preserved?*

*What is a healthy river?*

*How should the river's resources be used? What interests should be recognised?*

*What's wrong with the River Murray now?*

*What are the specific areas of cultural significance along the River Murray?*

*How should Indigenous interests in the River Murray be recognised?*

### *Project Feedback Process*

Responses have been consolidated for the purpose of this report, but individual reports from workshops and public forums are attached.

A draft report was considered by the Steering Committee and the MLDRIN Working Group in Berri on 5 March. The draft was authorised with some amendments.

## **2.2 Outcomes of Community Engagement Process**

### **2.2.1 Introduction**

This section of the report provides an overview of the Traditional Owner/Nations consultations and the broader community responses. For responses from individual meetings, refer to the attachments.

In summary the key issues that arose are succinctly identified in the MLDRIN position paper on The Living Murray document:

- **Recognising the need for justice**
- **Establishing a package of rights**
- **Development of reparation and compensation**
- **Embracing Indigenous self determination**
- **Development of an economic base for Indigenous Peoples**
- **Ensuring cultural and environmental heritage protection measures**

### **2.2.2 Summary of Community Responses**

The following information is a summary of the responses from the Traditional Owner/Indigenous Nations workshops and public community forums.

#### **2.2.2.1 Significance of the River Murray**

The River Murray is vital to Indigenous communities in many ways - spiritually, culturally, ecologically, economically, physically and socially.

The River Murray is central to the survival of Indigenous communities in terms of both environmental health and community health. The purity and quality of the water are critical for the safety of communities and children.

### *Cultural Economy*

The River Murray needs to be seen as a “cultural economy” to the Indigenous Nations that belong to the River. The “cultural economy” includes all the natural resources in the River Murray definition.

This ‘cultural economy’ previously allowed Indigenous Nations to maintain their traditional lifestyle across their country. This economy now has been diminished by the poor health of the river system that has decimated traditional sources of food and medicines.

As one group explained – “The healing that we use Old Man Weed for needs to be done by the River. It is the same with fish – we need to catch, cook and eat by the River. Now, we can’t get clay out of the bank to coat the fish or to use on our skin – this is a big part of women’s business.”

### *Cultural Heritage*

The cultural heritage of the River was a significant issue for all Indigenous people. Limited access to traditional lands and lack of acknowledgement of inherent/ birth rights were regarded as impediments to the protection of cultural heritage.

Common responses were:

- “Traditional vegetation along the river banks is disappearing, and it is harder to find with the changing of the habitats”
- “The green tree frog and the black frogs are no longer to be seen.”
- “Birds such as the ducks and swans have nowhere to nest as all the swamp country and flood ways no longer get flooded out.”
- “Fish traps are being destroyed due to constant high levels of water, and not being able to maintain the fish traps as we used to do.”

- “River banks are being eroded away due to constant high levels of water, some areas of the river flood plain are constantly under flood.”

#### **2.2.2.2 What are the values of the River Murray that should be preserved?**

It is important to protect and preserve the nurseries/wetlands/waterways from degradation.

Indigenous people must be given more involvement to protect and care for the river and take on more responsibility to ensure that the river is properly managed

The customary rights of Indigenous people should be recognised, protected, preserved and respected. These customary rights include:

- Spiritual connection
- Management of significant sites
- Protection of Indigenous history/sovereignty/people’s knowledge
- Preservation of Indigenous rights and heritage
- Access for hunting and fishing.

#### **2.2.2.3 What is a healthy river?**

A healthy river is free of toxins and introduced species. It has natural flows and cycles that feed all its parts such as the tributaries, creeks and nurseries. The native wildlife and plant species feed off the river as it provides the necessary nutrients to keep them alive.

The river provides life through food and quality drinking water to Indigenous Nations. It also provides life to the Australian community. It provides natural medicines to heal sickness and enjoyment for recreational purposes.

A healthy river is protected by government from abuse and overuse.

A healthy river is essential to ensure that future generations of Australians can enjoy the same quality of life as past generations.



#### **2.2.2.4 How should the river's resources be used? What interests should be recognised?**

It was acknowledged that all interests and people should be recognised.

A key issue is the lack of recognition of Indigenous interests and need for equal access and rights to water.

The entire ecosystem in and around the river needs to be maintained and looked after. If water is unhealthy, everything else will decline.

Protected areas need to be in place along the rivers to allow fish and other aquatic life to recover from over fishing. The traditional peoples of a given area should be working with government departments to identify such areas and monitor and regulate use of the river's resources.

Native fish should be restocked into the waterways and noxious animals, such as European carp, should be removed.

Speedboats should be confined to certain areas and their speed limited. Speedboats erode the river banks, wash up little fish and shrimp onto the bank and make it impossible for those who want to fish on the bank, or just enjoy the River.

#### **2.2.2.5 What's wrong with the River Murray now?**

The central responses were that the river is "over-used" and "abused" and that government has failed to ensure the river's resources are used in a sustainable way. In so doing, government has failed future generations.

#### **2.2.2.6 What are specific areas of cultural significance along the River Murray?**

There are a number of significant sites along the River that are listed on each State's Heritage List.

These are protected and must continue to be preserved. However, drought levels and over use have reduced water levels and exposed significant sites that are not listed.

There needs to be some form of compensation or avenue that enables recompense where sites have been degraded, or violated by land owners and the river's recreational users.

#### 2.2.2.7 How should Indigenous interests in the River Murray be recognised?

Participants identified a range of strategies that should be applied. They include the following:

- Engaging existing recognised Indigenous groups such as: Traditional Owners, Communities, Heritage groups, Native Title groups, individual landowners and specialist Indigenous organisations and enterprises.
- Enhancing existing legislation (eg Heritage Act).
- Recognising Traditional Owners and their traditional custodial responsibilities for land and waters.
- Recognising Elders as the voice/speakers for their country and their people.
- Providing adequate resources for Traditional Owners so they can participate equitably in policy and management decisions.
- Developing mechanisms for compensation where the traditional “cultural economy” is diminished or destroyed.

#### 2.2.2.8 What is your vision for the River Murray?

The vision for the River Murray needs to be seen in context. There are common themes, but each Indigenous Nation is

independent of all others and has its own custodial responsibilities, which may be exercised in different ways.

The Indigenous vision for the river system is holistic – it incorporates spiritual, cultural, economic and social values. All are inter-related. All the issues need to be addressed together.

The fact that there may be different views from Indigenous Nations should not be surprising. The same position exists in non-Indigenous society. Different States and Territories and the Commonwealth have their own legislative frameworks and approaches to issues.

## **Part 3      Way Forward**

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The Way Forward requires a collaborative effort, where all mainstream stakeholders and Indigenous Nations are engaged in achieving a shared vision.

This report identifies the issues, concerns and recommendations of Indigenous peoples. They require a response from the MDBC and the Ministerial Council so a clear agenda can be established.

Memorandums of Understanding (MOU's), protocols and agreements are a starting point to provide a pathway for the way forward.

However, statutory recognition of Indigenous Nations as Traditional Owners and sovereign people was seen as fundamental to progress.

Adequate resources and appropriate infrastructure for Indigenous Nations to undertake community capacity building activities also are essential.

Detailed steps are contained in the recommendations.

## **Attachment 1**

### **Consolidated Community Responses**

#### **What is your vision for the River Murray?**

Consistent responses were;

1. The cultural and spiritual significance of the river system to Indigenous people should be recognised, respected and accepted. “The land and rivers and the people are one.”
2. The river system should provide life to all.
3. It should be alive, healthy and free-flowing. “It should come back to life from the reeds to the insects.” “So that the black cockatoo returns to our country.” “The cod needs to continue from the mountains to the sea.”
4. The river should be brought back to its natural flow cycle.
5. People should be able to drink straight from the river. It should be clear, so you can see the bottom, and there should be sandy beaches.
6. The total ecosystem, including tributaries, should be respected.
7. The river’s resources should be used sustainably and protected for future generations.
8. Cultural heritage is respected and protected. Traditional custodial responsibilities can be discharged.
9. Indigenous people are responsible for ensuring cultural heritage is protected, and are employed to do so.
10. Traditional Owners should have access to significant sites and areas. There should be no barriers to continuing their cultural practice.
11. Traditional rights to fish and hunt are accepted.

12. The relationship between environmental and cultural and spiritual values is understood and accepted.
13. Native fish, birds, animals and plants abound.
14. Water is passed on in a good state to those downstream.
15. The river is free from blue-green algae.
16. The river is not polluted.
17. There is a better understanding and relationship between Traditional Owners, government and the community. Traditional Owners, government and the community come together in the long-term to protect the river system.
18. Traditional Owners are part of all decisions that affect the health of the river system.
19. Regulations about use of the river's resources are strictly enforced.
20. There are education campaigns about how to use the river system sustainably and the connection of Traditional Owners to their country.
21. Introduced fish and plants should be controlled and removed

**What is the significance of the River Murray to you?**

Consistent responses were:

1. The river is central to the culture of Indigenous Nations who have traditional custodial responsibility for the Basin. It provides their identity and their spirituality. "It is our lifeblood". "It is life". "Our beliefs are entwined in the river itself".
2. The river system is integral to song-lines and creation stories. It is the source of totems for groups and individuals.

3. The Basin contains many places of significance – burials, mounds, initiation sites, men's and women's places, ceremony grounds, meeting and gathering places.
4. The Basin is rich in relics and artefacts, middens, ochre grounds, camping sites, ovens, scar trees.
5. As the health of the river declines, Indigenous culture is eroded and diminished. Traditional Owners are devastated at loss of native fauna and flora and pollution of the river. Cultural and spiritual values are linked inextricably to environmental values.
6. The river helped to establish relationships between Indigenous Nations. There is an obligation on those upstream to provide good water to those downstream.
7. It provides connection between Indigenous Nations. It was a trade route and still is a highway.
8. The river has major economic importance. It is a source of food, fibre, water, medicine and other sustenance.
9. It also can help to generate greater economic independence. There are commercial opportunities in eco-tourism, cultural tourism, native nurseries and seed collection.
10. The decline in the health of the river system therefore has led to a decline in the economic position of Indigenous people. There are less cod, yabbies, mussels, eggs, plants and animals. Less traditional food sources and reduced commercial opportunities mean a fall in the standard of living and greater reliance on welfare.
11. The river is a place of healing. It provides a sense of balance and relief from stress and sickness.
12. The river provides social connection between Indigenous people and with non-Indigenous people. It is a source of recreation and can be a vehicle for reconciliation.
13. The whole river system is significant. It must be treated as a single ecosystem. Everything is connected and everything has

its place. Wetlands are the nursery for life in the river. Land clearing leads to salinity and destroys biodiversity.

14. The river is critical to health and welfare. Communities need a clean and reliable water supply.
15. The river is a source of cultural education for Indigenous youth. It creates opportunities to put young people in touch with their culture and move away from the cycle of alcohol, drugs, domestic violence and sexual abuse.
16. The river is important for future generations. It provides history and culture, continuity and connection.
17. Traditional Owners are absolutely frustrated and devastated that their cultural responsibilities for care of the Basin are not recognised properly by government and the community.

### **What are the values that should be preserved?**

Consistent responses were:

1. The river system has cultural, spiritual, environmental, social and economic values. All should be protected and preserved. Their significance is detailed in the previous section.
2. The whole system must be treated with respect. If it is in poor health, it can not provide cultural, spiritual, environmental, social or economic benefits.
3. The natural cycles of the river are very important. There must be times of flood and dry. If water levels remain high, trees and other vegetation will drown. If levels are kept low, trees and vegetation will die of thirst. There must be balance to the cycles.
4. The Basin must be managed on a sustainable basis. Resources must be used within their capacity so they can be maintained into the future.
5. The tributaries of the Murray are all part of the river system. The system must be approached as a whole. There are



complex inter-relationships that must be recognised between seasons, river flows, fish, plants and animals.

6. The river provides bush medicines and is essential to the physical and spiritual health of communities in many ways.

### **What is a healthy river?**

Consistent responses were:

1. The whole river system must be treated with respect and its resources used in a sustainable way.
2. There must be a “whole of landscape” policy approach.
3. There must be a long-term vision and long-term management.
4. There must be strong natural flows of water that flush the system regularly and keep the river mouth open.
5. If the river is healthy, culture and spirituality will be strong.
6. Water should be clear and drinkable.
7. Salinity must be reduced and water quality improved.
8. Native fish, animal, bird and plant species should abound.  
“We should be able to see the cod and hear the frogs. There should be plenty of yabbies and mussels. There should be reeds, catfish and birds. The grasses should come back.”
9. Flows should coincide with breeding seasons at the right time of the year.
10. Wetlands (nurseries) should be healthy.
11. Barriers to natural flows should be reduced – dams, locks and weirs.
12. Natural cycles of wet and dry should exist.
13. Water should be free of chemicals, pollution and algae.

14. Turtles should be free of algae.
15. There should be no black mud at the bottom of the river.
16. Introduced species such as carp and willows should be controlled and removed.
17. River-banks should be stable and protected from erosion.
18. Stock should be controlled so the impact of watering points is reduced. There needs to be fencing all along the river.
19. There should be no rubbish in the river.
20. There should be public education programs so everyone is aware of the importance of the river system and how everything is inter-related.

**How should the river's resources be used? What interests should be recognised?**

Consistent responses were:

1. The river's resources should be respected and used in a sustainable way.
2. The resources should be protected for future generations.
3. The resources should be shared between all interests. They should not be locked up, but they should be used within their capacity.
4. The first priority should be to ensure sufficient quantities and quality of water for human consumption.
5. There is a responsibility on those upstream to ensure those downstream receive good water.
6. Management decisions should maintain the biodiversity of the total catchment.

7. The custodial responsibilities of Traditional Owners must be recognised by government and the community. Lack of recognition causes great frustration and pain. “The scales are now unbalanced and our Ancestors are unhappy and restless. They will stay this way until balance is restored.”
8. Traditional Owners must be centrally involved in decisions about resource use in the Basin.
9. There should be water allocations for Indigenous Nations to enable them to discharge their custodial responsibilities.
10. The economic values of the river system should not be placed ahead of spiritual, cultural, environmental or social values. Management decisions should take all values into account.
11. Indigenous interests should be recognised according to traditional Nation boundaries. The unique governance structure of each Nation also needs to be recognised and protocols developed with each Nation about how they want to do business.
12. The intellectual property rights of Traditional Owners need to be recognised and accepted. They apply to particular knowledge about the properties of the natural world.
13. Efficiency of water use must be improved. Flood irrigation and open channels are inefficient.
14. Technology should be adopted to a greater extent to improve efficiency eg drip-feed irrigation.
15. There should be government assistance available to improve the efficiency of water use. Where there is public benefit, there should be public investment.
16. However, no compensation should be paid to industry for any loss of water access. Rights to water are a general community right. No-one owns water resources. No compensation was paid to Indigenous people for loss of their country.
17. Farmers will stay, but their management systems will have to keep on improving.

18. Management of water resources and the Basin as a whole needs to improve. There should be a “whole of government” approach because the Basin’s ecosystem is regulated by many agencies. Cooperation and coordination between the Commonwealth, States, the ACT and Local Government are essential.
19. Government should develop partnerships and agreements with the community, including Traditional Owners, to apply sustainable resource use principles and plans.
20. Agreements about resource use, particularly water use, should be monitored and penalties apply if the terms are breached.
21. Regulations about resource use need to be enforced effectively.
22. Water used by industry should be re-cycled and not pollute the river system.
23. River-banks should be fenced and the number of stock watering points should be reduced.
24. Comprehensive public education programs are required to ensure the community understands what is required for sustainable resource use.

### **What’s wrong with the River Murray now?**

Consistent responses were:

1. The river system is not being treated with the respect it is due.
2. Too much water is being taken out of the river system.
3. There is not enough natural flow to keep the mouth of the Murray open or to flush the river system. Infestations of blue-green algae have increased and water in some areas of the system is stagnant.

4. Water quality has fallen greatly. The water is undrinkable now.
5. Pollution by industry has increased. There is not enough oxygen in the river. There is too much sediment and black mud.
6. Salinity has increased and the water table is rising.
7. The amount of native fish, bird, plant and animal life has fallen and native species remain under threat.
8. Introduced species are increasing in number, particularly carp and willow trees.
9. Erosion of river banks has increased. Contributing factors include land clearing, artificially high flows, artificially high river levels, carp and wash from boats. In some areas, the river is twice as wide as it used to be.
10. Because the environmental values of the river system have been reduced, cultural values have been eroded. Spiritual connection to country and the living world is being lost.
11. Traditional Owners do not have access to sites and areas of cultural significance. As a result, it is harder to teach young people about their culture.
12. The Ministerial Council's reference points for greater environmental flows only give a low to moderate probability of improving the health of the river system. Scientific advice is that an extra 4,000 gl would be needed to give a moderate chance of restoring a healthy system.
13. The science of natural resource management does not incorporate Indigenous cultural knowledge.
14. Indigenous spiritual connection to the river system is not recognised or accepted.
15. Historical knowledge is not respected and utilised properly.

16. The need for agreement between members of the Ministerial Council slows down government decisions.
17. There is no “whole of government” approach. Many agencies have interests in the Basin and their approach needs to be better coordinated and integrated. The Ministerial Council should accept its responsibility to improve things.
18. Those upstream don’t always accept responsibility for their actions.
19. Regulations about water use and quality are not enforced effectively.
20. Illegal fishing is reducing native fish stocks.
21. Water is not always used efficiently. Evaporation rates are high and much irrigation is wasteful, particularly flood irrigation. The rice, cotton and wine industries are greedy about water.
22. The price of water and management decisions about its use do not fully reflect cultural, spiritual, environmental and social values. Neither do catchment management plans.
23. Natural cycles of flood and dry do not occur. Regulators prevent flooding in many areas.

**What are specific areas of cultural significance along the River Murray?**

Consistent responses were:

1. The entire river system and Basin are culturally significant to Indigenous people. The system should be recognised as a cultural landscape.
2. Significant sites are found from the river-banks to the flood plains to the sand hills.
3. Some Elders hold special knowledge about particular places.

## **How should Indigenous interests in the River Murray be recognised?**

Consistent responses were:

1. The custodial responsibilities of Traditional Owners to care for the river system must be recognised by government and the community.
2. There should be respect for traditional knowledge. It can help greatly to improve sustainable management.
3. Traditional knowledge should be accepted as an Intellectual Property Right.
4. Indigenous Nations must be centrally involved in management decisions about the river system within their Nation boundaries. They must be involved right from the beginning.
5. Management decisions within the Basin should incorporate cultural, spiritual, natural and social values, as well as economic values.
6. Natural cycles should be restored in the river system. This will replenish natural and cultural values.
7. Each Indigenous Nation should be granted a water allocation in recognition of its cultural responsibility to care for the river system. The allocation could be used to increase environmental flows, depending on the health of the river system. If the river is healthy, it could be used to improve the economic position of the Nation.
8. Each Indigenous Nation has its own unique governance structure that determines how it will engage with government and the community.
9. There should be protocols with different Nations about how they want to do business and how they will engage in natural resource management in the Basin.

10. The draft Memorandum of Understanding between the MDBC and MLDRIN is a good starting point and should be endorsed by the MDBC. It also should be endorsed by the Commonwealth, the States on the Ministerial Council and the ACT.
11. Each Indigenous Nation should develop a Cultural Heritage Management Plan (CHMP) to apply within its boundaries.
12. CHMPs should have the force of law and be a part of each regional/catchment plan within the Basin. They need to reflect the inter-relationship between environmental, cultural and spiritual values.
13. There must be adequate resources to develop and implement the CHMPs. Funds should be available for workshops and negotiations between Indigenous Nations, government, private landholders and the community.
14. The CHMPs should be implemented by Indigenous Nations. They may entail the development of a series of agreements with landholders, local government, the State/Territory etc.
15. The CHMPs should provide for access by Traditional Owners to sites and areas of cultural significance and for hunting and fishing.
16. Monitoring should be an essential component of CHMPs and should be undertaken by Indigenous rangers. Training programs will be necessary.
17. Indigenous Nations should be represented on all natural resource management bodies that have interests within their traditional boundaries.
18. There should be resources to provide a support network for Indigenous representatives on natural resource management bodies.
19. There also is a need for capacity building and community development within Indigenous Nations so they can contribute effectively to sustainable resource management.



20. The boundaries of Indigenous Nations should be recognised in signage and other public information.
21. The use of traditional place-names should be encouraged, in consultation with Traditional Owners.
21. School curricula should include local Indigenous history.
22. The importance of Indigenous cultural heritage should be promoted in public information and education.
23. Cultural training should be undertaken at all levels of government and within natural resource management bodies.

## Attachment 2 MLDRIN Position Paper

### The Living Murray

The issues are those as determined by members of the Murray Lower Darling Rivers Indigenous Nations. Words as highlighted are icons to the core interests of Indigenous peoples.

#### Issues Log for Indigenous Peoples

1. Acknowledgement of Indigenous connection to lands and waters is based on their own view of Creation and this is reflected within a spiritual web that is linked to important places and ceremony
2. Elders are held with Indigenous society with respect and this needs to be given empowerment through an effective decision making role. Their collective and individual knowledge bank has been passed on through many generations of living within their lands and waters. This knowledge or intellectual property and values need to be held and imparted with the utmost respect and protection.
3. Indigenous Nations need recognition and respect as having inherent rights that are unique to their country. It is the responsibility of each Nation to hold on to their sovereignty, their autonomy and their rights to self-government.
4. Indigenous Nations have the ability to provide advocacy through strong processes that provides unity and co-operation. A process that provides for their united voice. Indigenous Nations are committed to a shared vision for the future through ensuring consultation on all levels and sharing of knowledge.
5. Indigenous Peoples hold a holistic concept to their lands and waters which are seen as different to the

**western value systems. We can learn to co-exist through the development of protocols which acknowledge the unique interests of Indigenous Nations and its people. These can be incorporated within processes and procedures of natural resources wealth sharing which includes water with Indigenous Nations.**

**They include the need for:**

- **Recognising the need for justice**
- **Establishing a package of rights**
- **Development of reparation and compensation**
- **Embracing Indigenous self determination**
- **Development of an economic base for Indigenous Peoples**
- **Ensuring cultural and environmental heritage protection measures**

Refer to: [www.thelivingmurray.mdbc.gov.au](http://www.thelivingmurray.mdbc.gov.au)

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Responses from each public forum and responses from each Traditional Owner workshop are available in the extended version of this paper available from - [www.thelivingmurray.mdbc.gov.au](http://www.thelivingmurray.mdbc.gov.au)

# **Report to the Murray Darling Basin Commission**

## **Indigenous Response to the Living Murray Initiative**

**April 2003**

## **Introductory Note**

Please note: This is a report commissioned by the MDBC to detail Indigenous responses to The Living Murray.

The contents of this publication do not purport to represent the position of the Murray-Darling Basin Commission.

The intention of this paper is to inform discussion for the improvement of the management of the Basin's natural resources.

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Part 1 Executive Summary

Part 2 Community Engagement Process

Part 3 Way Forward

## Attachments

1. Consolidated community responses
2. MLDRIN Position Paper
3. Responses from each public forum
4. Responses from each Traditional Owner workshop

# Part 1 Executive Summary

## 1.1 Background

The Murray Darling Basin Ministerial Council agreed to the following vision for the River Murray in March 2001 – “*a healthy River Murray system, sustaining communities and preserving unique values*”.

In April 2002, the Ministerial Council:

1. agreed to hold a community-wide consultation process about environmental flows, beginning in April 2002;
2. directed that a comprehensive study be done on the costs and benefits to the environment and the community of returning water to the environment;
3. recognised a need to spend \$150 million on modifying dams, weirs and locks and other measures to make best use of all the water currently available to the environment; and
4. recognised the importance of establishing water trading arrangements for the efficient allocation of the scarce water resources of the Basin and that the effectiveness of these arrangements will depend on clear definition of access rights to water.

The Murray Darling Basin Commission (MDBC) is to report to the Ministerial Council on community engagement. It wants to determine the community's knowledge, values, aspirations, issues information needs and concerns in relation to the vision of the Ministerial Council.

The MDBC has commissioned this report to detail Indigenous responses to these matters.

In compiling this report, the Farley Consulting Group (FCG) has worked in conjunction with MLDRIN.

This report is required to:

1. identify the range of issues, concerns, values and aspirations raised throughout the consultations, including knowledge gained from consultations undertaken by MLDRIN;
2. outline the geographical scope, representation and interests covered in the consultations;
3. provide direction for the broader community engagement strategy to address any issues relating to engagement and communication requirements for Indigenous communities.

## **1.2 Introduction**

The Murray Darling Basin Ministerial Council is asking the community to discuss the best way to achieve its vision of “a healthy River Murray system, sustaining communities and preserving unique values”. The Murray Darling Basin Commission (MDBC) is to report on community engagement to the Ministerial Council.

### **1.2.1 Feasibility Study**

An initial Feasibility Study was undertaken by MLDRIN and FCG in October 2002. The Study was accepted by the MDBC in December 2002.

The Feasibility Study identified the need for a two-stream approach:

- one by MLDRIN to engage Traditional Owners/Nations through workshops;
- one by the FCG to engage other Indigenous people and organisations through public forums.

The Feasibility Study also identified the need for a three-stage Indigenous Engagement Project:

- stage 1 to report on issues, concerns, values and aspirations;
- stage 2 to inform the community of Ministerial Council responses to stage one, consider social and economic impact research, and gather subsequent community reactions;
- stage 3 to advise the community of actions that will be taken by government.

### **1.2.2 Community Engagement Process**

Indigenous responses were gathered in two streams:

- workshops with Traditional Owners/Indigenous Nations;
- public forums to enable input from other Indigenous people and organisations.

Responses from the two streams are remarkably consistent. The central themes are:

- 1. Shared Vision**
- 2. Recognition,**
- 3. Respect for country,**
- 4. Involvement**
- 5. Policy Change**

#### **1.2.2.1 Shared Vision**

The vision for the River Murray is one of a healthy, living river system with natural flows and cycles.



It is essential that the visions of Indigenous Nations are accepted in holistic terms. It is also important to note that while the visions of Indigenous Nations could be the same or similar, they will also be independent due to the inherent cultural diversity of each Nation in relation to traditions, sites, stories and cultural practices.

Such diversity is not confined to Indigenous Nations – it is reflected in the different approaches and priorities of States and Territories within the Commonwealth system.

Management of the River Murray needs to incorporate a range of outcomes including those listed below:

- Healthy
- Free flowing
- Alive
- Natural cycles
- Restocked
- Revegetated
- Access rights for Indigenous people so they can move freely to continue cultural practice
- Traditional fishing/hunting
- Indigenous people and Nations recognised and respected for what and who we are
- The rivers and tributaries are respected and cared for
- Indigenous Nation recognised as sovereign entities in their own country.

#### **1.2.2.2 Recognition**

Distinct rights exist for Indigenous peoples as part of their rights to self-determination. These rights should be recognised as inherent and holistic. They are:

- Customary rights of Indigenous Nations along the Murray Darling system; and
- Human rights to maintain a cultural economy

Customary rights relate to cultural self-determination and the preservation of distinctive cultural identities.

Human rights to maintain a ‘cultural economy’ relate to Indigenous Nations being able to undertake activities that secure sustainable capital from the natural resources that traditionally and historically belong to each Nation.

#### **1.2.2.3 Respect for Country**

Indigenous peoples clearly identified concerns about the lack of respect not only for themselves, but also for the natural resources of the country.

The river system must be treated with respect, as it is the lifeblood of the country. If the river is in poor health, it can not provide spiritual, cultural, economic and social benefits to all those who depend on it.

The basis of management of the river system must be a whole landscape approach, including all tributaries of the River Murray. The objective for management of the river's resources must be **sustainable use** with the core values of the river system preserved as a legacy for future generations.

To fully respect the river and all adjoining systems, the mouth of the River Murray should be open. This can only occur if the needs of the river are respected - it effectively means increasing natural flows, bringing back native fauna and flora and eradicating introduced species such as carp and willow trees.

#### **1.2.2.4 Indigenous Involvement**

The community engagement process highlighted quite clearly that Indigenous people want to be actively involved at all levels of management of natural resources throughout their traditional lands.

The initial building block for involvement by Traditional Owners should be protocols with Indigenous Nations about how they wish to do business with government and the general community on management of natural resources.

The draft Memorandum of Understanding between the MDBC and the Murray and Lower Darling Rivers Indigenous Nations (MLDRIN) is a starting point and should be endorsed by the MDBC, the States on the Ministerial Council and the ACT.

Cultural Heritage Management Plans (CHMPs) then should be developed between government and Indigenous Nations with custodial responsibilities for the river system. The CHMPs should have the force of law and reflect the inter-relationship between environmental values and spiritual and cultural values.

#### **1.2.2.5 Policy Approaches**

The consultations raised a number of issues about the policy approaches used by government for management of the river system and the role of Indigenous people in the policy development process.

There was a clear view that cultural, environmental and social values should be given equal status with economic values when policy and management decisions

are made. This would require the development of new indicators and changes to the structure of water pricing in the Basin.

It also was very clear that Indigenous Nations believe they have rights to be engaged and involved, and wish to be engaged and involved, at all levels in the management of the river system.

### **Water allocations to provide for cultural economy**

There was a widely held view that a water allocation should be available to each Indigenous Nation to enable them to exercise their custodial responsibilities to care for the river system. Each Nation would decide whether its allocation should be used to increase environmental flows or to help generate a more independent economic base for their people. The decision would be taken in the context of the health of the river system and their custodial responsibilities.

At the same time, there should be initiatives to encourage more efficient use of water. This would entail public investment in incentives and assistance for industry and other water users to change management systems.

### **Compensation**

Indigenous people reject the concept of compensation for any loss of water allocations by industry as inequitable, given the legislative history of Australia that prevents Indigenous Nations from having any rights to water.

The spiritual, cultural, economic and social health of Indigenous peoples depends on the health of the river system. If the system is unable to provide such support, many Indigenous people believe there is a basis for compensation for loss of traditional values.

### **Environmental flows**

Indigenous people believe the policy objective must be to restore natural flows and cycles to the river system. The current reference points determined by the Ministerial Council for increased environmental flows are unsatisfactory. Even the top reference point has only a low to moderate probability of restoring the health of the river system.

Indigenous people also believe management of the river system's resources should be made more efficient. This may entail additional public investment in infrastructure.

Indigenous people are frustrated that the Ministerial Council has been unable to achieve a whole of government approach to management of the Basin's natural resources.

## **Indigenous Intellectual Rights**

Indigenous people want traditional knowledge recognised for the contribution it can make to resource management and as an Intellectual Property Right.

They believe there should be comprehensive public education campaigns so the community has a better understanding of what is required for sustainable resource use and of the central importance of country to Indigenous culture and spirituality.

### **1.3 Recommendations**

1. That the issues, concerns, values and aspirations of Indigenous people:
  - be placed on the Issues Log of the broad community engagement process;
  - be considered by the MDBC and the Ministerial Council.
2. That the Ministerial Council and the MDBC receive a delegation from Indigenous Nations to allow discussion of the issues.
3. That the MDBC proceed with the three-stage Indigenous Engagement Project detailed in the Feasibility Study and provide necessary resources.
4. That the MDBC provide a forum for Indigenous Nations to come together to determine their position on natural resource management issues and continue to provide support for MLDRIN in this respect.
5. That the MDBC and the Ministerial Council develop legally binding agreements/protocols with Indigenous Nations, according to their traditional boundaries. The agreements/protocols should establish a framework for involvement by the Nations in management of the Basin's natural resources.
6. That the MDBC and the Ministerial Council ensure Indigenous Nations are represented on all natural resource management bodies in the Basin and centrally involved in their policy and management decisions.
7. That the MDBC and the Ministerial Council ensure that cultural, environmental and social values are given equal weight with economic values in policy and management decisions and water pricing in the Basin.
8. That the MDBC and the Ministerial Council develop Cultural Heritage Management Plans (CHMPs) with Indigenous Nations, according to their traditional boundaries.
9. The CHMPs should be incorporated into all relevant natural resource plans and local council development plans.

10. The CHMPs must be implemented by the respective Indigenous Nations, according to their boundaries, and provide employment for Indigenous people. They also should provide access for Traditional Owners to sites and areas of significance and for hunting and fishing.
11. That the MDBC and the Ministerial Council provide a water allocation for each Indigenous Nation.
12. That the MDBC and the Ministerial Council extend the current reference points for environmental flows so healthier outcomes for the river are possible.
13. Resources are essential to enable equitable engagement by Traditional Owners in natural resource management. Resources will be necessary for negotiation, training, capacity building, and support for Traditional Owner representatives.
14. Cross-cultural training should be undertaken at all levels of government and by natural resource management bodies.

## **Part 2 Community Engagement Process**

### **2.1 Introduction**

#### **Project Management**

A project Steering Committee was established to oversee the project. It comprises two MLDRIN representatives, one representative of the Community Advisory Committee to the Ministerial Council, and one representative from the office of the MDBC.

The Steering Committee identified where workshops and public forums should be held.

#### **MLDRIN Traditional Owner Group Coordinators**

MLDRIN appointed three coordinators to work with the MDBC and FCG. Each coordinator was given responsibility for consultation with particular Nations.

MLDRIN coordinators held workshops with the following Traditional Owners:

- 12 December 2002 in Murray Bridge – Ngarrindjeri, Kurna and Peramangk Nations;
- 18 December in Swan Hill – Wamba Wamba and Wadi Wadi Nations;
- 20 December in Albury – Wiradjuri Nation;
- 24 January in Barmah – Yorta Yorta Nation;
- 28 January in Deniliquin – Wamba Wamba Nation;
- 1 February in Balranald – Muthi Muthi Nation;
- 5 February in Robinvale – Mungatanga Elders
- 9 February in Menindee – Barkindji and Nyiamppa Nations.

#### **Public Forums**

Public forums were held by FCG on:

- 5 February in Murray Bridge;
- 7 February in Buronga
- 9 February in Menindee
- 12 February in Swan Hill
- 14 February in Albury.

#### **Community & Public Awareness Strategy**

The public forums were advertised in:

- Koori Mail;
- National Indigenous Times;
- Murray Valley Standard;
- Sunraysia Daily;

- Barrier Daily Truth;
- Swan Hill Guardian;
- Albury Border Mail.

In addition, invitations to the public forums were faxed/mailed to 60 Indigenous organisations, based on lists provided by the MLDRIN coordinators.

The MDBC made a presentation on The Living Murray initiative to each workshop and public forum.

### **MLDRIN Community Fact Sheet**

A MLDRIN fact sheet and brief was tabled at each workshop and public forum and a MLDRIN representative presented their views.

The following standard questions were put to each workshop and public forum:

*What is your vision for the River Murray?*

*What is the significance of the River Murray to you?*

*What are the values that should be preserved?*

*What is a healthy river?*

*How should the river's resources be used? What interests should be recognised?*

*What's wrong with the River Murray now?*

*What are the specific areas of cultural significance along the River Murray?*

*How should Indigenous interests in the River Murray be recognised?*

### **Project Feedback Process**

Responses have been consolidated for the purpose of this report, but individual reports from workshops and public forums are attached.

A draft report was considered by the Steering Committee and the MLDRIN Working Group in Berri on 5 March. The draft was authorised with some amendments.

## **2.2 Outcomes of Community Engagement Process**

### **2.2.1 Introduction**

This section of the report provides an overview of the Traditional Owner/Nations consultations and the broader community responses. For responses from individual meetings, refer to the attachments.

In summary the key issues that arose are succinctly identified in the MLDRIN position paper on The Living Murray document:

- Recognising the need for **justice**
- Establishing a package of **rights**
- Development of **reparation** and **compensation**

- Embracing Indigenous **self determination**
- Development of an **economic base** for Indigenous Peoples
- Ensuring cultural and environmental **heritage protection** measures

## 2.2.2 Summary of Community Responses

The following information is a summary of the responses from the Traditional Owner/Indigenous Nations workshops and public community forums.

### 2.2.2.1 Significance of the River Murray

The River Murray is vital to Indigenous communities in many ways - spiritually, culturally, ecologically, economically, physically and socially.

The River Murray is central to the survival of Indigenous communities in terms of both environmental health and community health. The purity and quality of the water are critical for the safety of communities and children.

#### Cultural Economy

The River Murray needs to be seen as a “cultural economy” to the Indigenous Nations that belong to the River. The “cultural economy” includes all the natural resources in the River Murray definition.

This ‘cultural economy’ previously allowed Indigenous Nations to maintain their traditional lifestyle across their country. This economy now has been diminished by the poor health of the river system that has decimated traditional sources of food and medicines.

As one group explained – “The healing that we use Old Man Weed for needs to be done by the River. It is the same with fish – we need to catch, cook and eat by the River. Now, we can’t get clay out of the bank to coat the fish or to use on our skin – this is a big part of women’s business.”

#### Cultural Heritage

The cultural heritage of the River was a significant issue for all Indigenous people. Limited access to traditional lands and lack of acknowledgement of inherent/ birth rights were regarded as impediments to the protection of cultural heritage.

Common responses were:

- “Traditional vegetation along the river banks is disappearing, and it is harder to find with the changing of the habitats”
- “The green tree frog and the black frogs are no longer to be seen.”
- “Birds such as the ducks and swans have nowhere to nest as all the swamp country and flood ways no longer get flooded out.”



- “Fish traps are being destroyed due to constant high levels of water, and not being able to maintain the fish traps as we used to do.”
- “River banks are being eroded away due to constant high levels of water, some areas of the river flood plain are constantly under flood.”

#### **2.2.2.2 What are the values of the River Murray that should be preserved?**

It is important to protect and preserve the nurseries/wetlands/waterways from degradation.

Indigenous people must be given more involvement to protect and care for the river and take on more responsibility to ensure that the river is properly managed

The customary rights of Indigenous people should be recognised, protected, preserved and respected. These customary rights include:

- Spiritual connection
- Management of significant sites
- Protection of Indigenous history/sovereignty/people’s knowledge
- Preservation of Indigenous rights and heritage
- Access for hunting and fishing.

#### **2.2.2.3 What is a healthy river?**

A healthy river is free of toxins and introduced species. It has natural flows and cycles that feed all its parts such as the tributaries, creeks and nurseries. The native wildlife and plant species feed off the river as it provides the necessary nutrients to keep them alive.

The river provides life through food and quality drinking water to Indigenous nations. It also provides life to the Australian community. It provides natural medicines to heal sickness and enjoyment for recreational purposes.

A healthy river is protected by government from abuse and overuse.

A healthy river is essential to ensure that future generations of Australians can enjoy the same quality of life as past generations.

#### **2.2.2.4 How should the river’s resources be used? What interests should be recognised?**

It was acknowledged that all interests and people should be recognised.

A key issue is the lack of recognition of Indigenous interests and need for equal access and rights to water.

The entire ecosystem in and around the river needs to be maintained and looked after. If water is unhealthy, everything else will decline.

Protected areas need to be in place along the rivers to allow fish and other aquatic life to recover from over fishing. The traditional peoples of a given area should be working with government departments to identify such areas and monitor and regulate use of the river's resources.

Native fish should be restocked into the waterways and noxious animals, such as European carp, should be removed.

Speedboats should be confined to certain areas and their speed limited. Speedboats erode the river banks, wash up little fish and shrimp onto the bank and make it impossible for those who want to fish on the bank, or just enjoy the River.

#### **2.2.2.5 What's wrong with the River Murray now?**

The central responses were that the river is "over-used" and "abused" and that government has failed to ensure the river's resources are used in a sustainable way. In so doing, government has failed future generations.

#### **2.2.2.6 What are specific areas of cultural significance along the River Murray?**

There are a number of significant sites along the River that are listed on each State's Heritage List.

These are protected and must continue to be preserved. However, drought levels and over use have reduced water levels and exposed significant sites that are not listed.

There needs to be some form of compensation or avenue that enables recompense where sites have been degraded, or violated by land owners and the river's recreational users.

#### **2.2.2.7 How should Indigenous interests in the River Murray be recognised?**

Participants identified a range of strategies that should be applied. They include the following:

- Engaging existing recognised Indigenous groups such as: Traditional Owners, Communities, Heritage groups, Native Title groups, individual landowners and specialist Indigenous organisations and enterprises.
- Enhancing existing legislation (eg Heritage Act).
- Recognising Traditional Owners and their traditional custodial responsibilities for land and waters.
- Recognising Elders as the voice/speakers for their country and their people.
- Providing adequate resources for Traditional Owners so they can participate equitably in policy and management decisions.
- Developing mechanisms for compensation where the traditional “cultural economy” is diminished or destroyed.

#### **2.2.2.8 What is your vision for the River Murray?**

The vision for the River Murray needs to be seen in context. There are common themes, but each Indigenous Nation is independent of all others and has its own custodial responsibilities, which may be exercised in different ways.

The Indigenous vision for the river system is holistic – it incorporates spiritual, cultural, economic and social values. All are inter-related. All the issues need to be addressed together.

The fact that there may be different views from Indigenous Nations should not be surprising. The same position exists in non-Indigenous society. Different States and Territories and the Commonwealth have their own legislative frameworks and approaches to issues.

## **Part 3 Way Forward**

The Way Forward requires a collaborative effort, where all mainstream stakeholders and Indigenous Nations are engaged in achieving a shared vision.

This report identifies the issues, concerns and recommendations of Indigenous peoples. They require a response from the MDBC and the Ministerial Council so a clear agenda can be established.

Memorandums of Understanding (MOU's), protocols and agreements are a starting point to provide a pathway for the way forward.

However, statutory recognition of Indigenous Nations as Traditional Owners and sovereign people was seen as fundamental to progress.

Adequate resources and appropriate infrastructure for Indigenous Nations to undertake community capacity building activities also are essential.

Detailed steps are contained in the recommendations.

## **Attachment 1 Consolidated Community Responses**

### **What is your vision for the River Murray?**

Consistent responses were;

1. The cultural and spiritual significance of the river system to Indigenous people should be recognised, respected and accepted. “The land and rivers and the people are one.”
2. The river system should provide life to all.
3. It should be alive, healthy and free-flowing. “It should come back to life from the reeds to the insects.” “So that the black cockatoo returns to our country.” “The cod needs to continue from the mountains to the sea.”
4. The river should be brought back to its natural flow cycle.
5. People should be able to drink straight from the river. It should be clear, so you can see the bottom, and there should be sandy beaches.
6. The total ecosystem, including tributaries, should be respected.
7. The river’s resources should be used sustainably and protected for future generations.
8. Cultural heritage is respected and protected. Traditional custodial responsibilities can be discharged.
9. Indigenous people are responsible for ensuring cultural heritage is protected, and are employed to do so.
10. Traditional Owners should have access to significant sites and areas. There should be no barriers to continuing their cultural practice.
11. Traditional rights to fish and hunt are accepted.
12. The relationship between environmental and cultural and spiritual values is understood and accepted.
13. Native fish, birds, animals and plants abound.
14. Water is passed on in a good state to those downstream.
15. The river is free from blue-green algae.

16. The river is not polluted.
17. There is a better understanding and relationship between Traditional Owners, government and the community. Traditional Owners, government and the community come together in the long-term to protect the river system.
18. Traditional Owners are part of all decisions that affect the health of the river system.
19. Regulations about use of the river's resources are strictly enforced.
20. There are education campaigns about how to use the river system sustainably and the connection of Traditional Owners to their country.
21. Introduced fish and plants should be controlled and removed

### **What is the significance of the River Murray to you?**

Consistent responses were:

1. The river is central to the culture of Indigenous Nations who have traditional custodial responsibility for the Basin. It provides their identity and their spirituality. "It is our lifeblood". "It is life". "Our beliefs are entwined in the river itself".
2. The river system is integral to song-lines and creation stories. It is the source of totems for groups and individuals.
3. The Basin contains many places of significance – burials, mounds, initiation sites, men's and women's places, ceremony grounds, meeting and gathering places.
4. The Basin is rich in relics and artefacts, middens, ochre grounds, camping sites, ovens, scar trees.
5. As the health of the river declines, Indigenous culture is eroded and diminished. Traditional Owners are devastated at loss of native fauna and flora and pollution of the river. Cultural and spiritual values are linked inextricably to environmental values.
6. The river helped to establish relationships between Indigenous Nations. There is an obligation on those upstream to provide good water to those downstream.

7. It provides connection between Indigenous Nations. It was a trade route and still is a highway.
8. The river has major economic importance. It is a source of food, fibre, water, medicine and other sustenance.
9. It also can help to generate greater economic independence. There are commercial opportunities in eco-tourism, cultural tourism, native nurseries and seed collection.
10. The decline in the health of the river system therefore has led to a decline in the economic position of Indigenous people. There are less cod, yabbies, mussels, eggs, plants and animals. Less traditional food sources and reduced commercial opportunities mean a fall in the standard of living and greater reliance on welfare.
11. The river is a place of healing. It provides a sense of balance and relief from stress and sickness.
12. The river provides social connection between Indigenous people and with non-Indigenous people. It is a source of recreation and can be a vehicle for reconciliation.
13. The whole river system is significant. It must be treated as a single ecosystem. Everything is connected and everything has its place. Wetlands are the nursery for life in the river. Land clearing leads to salinity and destroys biodiversity.
14. The river is critical to health and welfare. Communities need a clean and reliable water supply.
15. The river is a source of cultural education for Indigenous youth. It creates opportunities to put young people in touch with their culture and move away from the cycle of alcohol, drugs, domestic violence and sexual abuse.
16. The river is important for future generations. It provides history and culture, continuity and connection.
17. Traditional Owners are absolutely frustrated and devastated that their cultural responsibilities for care of the Basin are not recognised properly by government and the community.

### **What are the values that should be preserved?**

Consistent responses were:

1. The river system has cultural, spiritual, environmental, social and economic values. All should be protected and preserved. Their significance is detailed in the previous section.
2. The whole system must be treated with respect. If it is in poor health, it can not provide cultural, spiritual, environmental, social or economic benefits.
3. The natural cycles of the river are very important. There must be times of flood and dry. If water levels remain high, trees and other vegetation will drown. If levels are kept low, trees and vegetation will die of thirst. There must be balance to the cycles.
4. The Basin must be managed on a sustainable basis. Resources must be used within their capacity so they can be maintained into the future.
5. The tributaries of the Murray are all part of the river system. The system must be approached as a whole. There are complex inter-relationships that must be recognised between seasons, river flows, fish, plants and animals.
6. The river provides bush medicines and is essential to the physical and spiritual health of communities in many ways.

### **What is a healthy river?**

Consistent responses were:

1. The whole river system must be treated with respect and its resources used in a sustainable way.
2. There must be a “whole of landscape” policy approach.
3. There must be a long-term vision and long-term management.
4. There must be strong natural flows of water that flush the system regularly and keep the river mouth open.
5. If the river is healthy, culture and spirituality will be strong.
6. Water should be clear and drinkable.
7. Salinity must be reduced and water quality improved.
8. Native fish, animal, bird and plant species should abound. “We should be able to see the cod and hear the frogs. There should be plenty of yabbies and



mussels. There should be reeds, catfish and birds. The grasses should come back.”

9. Flows should coincide with breeding seasons at the right time of the year.
10. Wetlands (nurseries) should be healthy.
11. Barriers to natural flows should be reduced – dams, locks and weirs.
12. Natural cycles of wet and dry should exist.
13. Water should be free of chemicals, pollution and algae.
14. Turtles should be free of algae.
15. There should be no black mud at the bottom of the river.
16. Introduced species such as carp and willows should be controlled and removed.
17. River-banks should be stable and protected from erosion.
18. Stock should be controlled so the impact of watering points is reduced. There needs to be fencing all along the river.
19. There should be no rubbish in the river.
20. There should be public education programs so everyone is aware of the importance of the river system and how everything is inter-related.

**How should the river’s resources be used? What interests should be recognised?**

Consistent responses were:

1. The river’s resources should be respected and used in a sustainable way.
2. The resources should be protected for future generations.
3. The resources should be shared between all interests. They should not be locked up, but they should be used within their capacity.
4. The first priority should be to ensure sufficient quantities and quality of water for human consumption.

5. There is a responsibility on those upstream to ensure those downstream receive good water.
6. Management decisions should maintain the biodiversity of the total catchment.
7. The custodial responsibilities of Traditional Owners must be recognised by government and the community. Lack of recognition causes great frustration and pain. "The scales are now unbalanced and our Ancestors are unhappy and restless. They will stay this way until balance is restored."
8. Traditional Owners must be centrally involved in decisions about resource use in the Basin.
9. There should be water allocations for Indigenous Nations to enable them to discharge their custodial responsibilities.
10. The economic values of the river system should not be placed ahead of spiritual, cultural, environmental or social values. Management decisions should take all values into account.
11. Indigenous interests should be recognised according to traditional Nation boundaries. The unique governance structure of each Nation also needs to be recognised and protocols developed with each Nation about how they want to do business.
12. The intellectual property rights of Traditional Owners need to be recognised and accepted. They apply to particular knowledge about the properties of the natural world.
13. Efficiency of water use must be improved. Flood irrigation and open channels are inefficient.
14. Technology should be adopted to a greater extent to improve efficiency eg drip-feed irrigation.
15. There should be government assistance available to improve the efficiency of water use. Where there is public benefit, there should be public investment.
16. However, no compensation should be paid to industry for any loss of water access. Rights to water are a general community right. No-one owns water resources. No compensation was paid to Indigenous people for loss of their country.
17. Farmers will stay, but their management systems will have to keep on improving.

18. Management of water resources and the Basin as a whole needs to improve. There should be a “whole of government” approach because the Basin’s ecosystem is regulated by many agencies. Cooperation and coordination between the Commonwealth, States, the ACT and Local Government are essential.
19. Government should develop partnerships and agreements with the community, including Traditional Owners, to apply sustainable resource use principles and plans.
20. Agreements about resource use, particularly water use, should be monitored and penalties apply if the terms are breached.
21. Regulations about resource use need to be enforced effectively.
22. Water used by industry should be re-cycled and not pollute the river system.
23. River-banks should be fenced and the number of stock watering points should be reduced.
24. Comprehensive public education programs are required to ensure the community understands what is required for sustainable resource use.

### **What’s wrong with the River Murray now?**

Consistent responses were:

1. The river system is not being treated with the respect it is due.
2. Too much water is being taken out of the river system.
3. There is not enough natural flow to keep the mouth of the Murray open or to flush the river system. Infestations of blue-green algae have increased and water in some areas of the system is stagnant.
4. Water quality has fallen greatly. The water is undrinkable now.
5. Pollution by industry has increased. There is not enough oxygen in the river. There is too much sediment and black mud.
6. Salinity has increased and the water table is rising.
7. The amount of native fish, bird, plant and animal life has fallen and native species remain under threat.

8. Introduced species are increasing in number, particularly carp and willow trees.
9. Erosion of river banks has increased. Contributing factors include land clearing, artificially high flows, artificially high river levels, carp and wash from boats. In some areas, the river is twice as wide as it used to be.
10. Because the environmental values of the river system have been reduced, cultural values have been eroded. Spiritual connection to country and the living world is being lost.
11. Traditional Owners do not have access to sites and areas of cultural significance. As a result, it is harder to teach young people about their culture.
12. The Ministerial Council's reference points for greater environmental flows only give a low to moderate probability of improving the health of the river system. Scientific advice is that an extra 4,000 gl would be needed to give a moderate chance of restoring a healthy system.
13. The science of natural resource management does not incorporate Indigenous cultural knowledge.
14. Indigenous spiritual connection to the river system is not recognised or accepted.
15. Historical knowledge is not respected and utilised properly.
16. The need for agreement between members of the Ministerial Council slows down government decisions.
17. There is no "whole of government" approach. Many agencies have interests in the Basin and their approach needs to be better coordinated and integrated. The Ministerial Council should accept its responsibility to improve things.
18. Those upstream don't always accept responsibility for their actions.
19. Regulations about water use and quality are not enforced effectively.
20. Illegal fishing is reducing native fish stocks.
21. Water is not always used efficiently. Evaporation rates are high and much irrigation is wasteful, particularly flood irrigation. The rice, cotton and wine industries are greedy about water.

22. The price of water and management decisions about its use do not fully reflect cultural, spiritual, environmental and social values. Neither do catchment management plans.
23. Natural cycles of flood and dry do not occur. Regulators prevent flooding in many areas.

### **What are specific areas of cultural significance along the River Murray?**

Consistent responses were:

1. The entire river system and Basin are culturally significant to Indigenous people. The system should be recognised as a cultural landscape.
2. Significant sites are found from the river-banks to the flood plains to the sand hills.
3. Some Elders hold special knowledge about particular places.

### **How should Indigenous interests in the River Murray be recognised?**

Consistent responses were:

1. The custodial responsibilities of Traditional Owners to care for the river system must be recognised by government and the community.
2. There should be respect for traditional knowledge. It can help greatly to improve sustainable management.
3. Traditional knowledge should be accepted as an Intellectual Property Right.
4. Indigenous Nations must be centrally involved in management decisions about the river system within their nation boundaries. They must be involved right from the beginning.
5. Management decisions within the Basin should incorporate cultural, spiritual, natural and social values, as well as economic values.
6. Natural cycles should be restored in the river system. This will replenish natural and cultural values.
7. Each Indigenous Nation should be granted a water allocation in recognition of its cultural responsibility to care for the river system. The allocation could be used to increase environmental flows, depending on the health of the river

system. If the river is healthy, it could be used to improve the economic position of the Nation.

8. Each Indigenous Nation has its own unique governance structure that determines how it will engage with government and the community.
9. There should be protocols with different Nations about how they want to do business and how they will engage in natural resource management in the Basin.
10. The draft Memorandum of Understanding between the MDBC and MLDRIN is a good starting point and should be endorsed by the MDBC. It also should be endorsed by the Commonwealth, the States on the Ministerial Council and the ACT.
11. Each Indigenous Nation should develop a Cultural Heritage Management Plan (CHMP) to apply within its boundaries.
12. CHMPs should have the force of law and be a part of each regional/catchment plan within the Basin. They need to reflect the inter-relationship between environmental, cultural and spiritual values.
13. There must be adequate resources to develop and implement the CHMPs. Funds should be available for workshops and negotiations between Indigenous Nations, government, private landholders and the community.
14. The CHMPs should be implemented by Indigenous Nations. They may entail the development of a series of agreements with landholders, local government, the State/Territory etc.
15. The CHMPs should provide for access by Traditional Owners to sites and areas of cultural significance and for hunting and fishing.
16. Monitoring should be an essential component of CHMPs and should be undertaken by Indigenous rangers. Training programs will be necessary.
17. Indigenous Nations should be represented on all natural resource management bodies that have interests within their traditional boundaries.
18. There should be resources to provide a support network for Indigenous representatives on natural resource management bodies.
19. There also is a need for capacity building and community development within Indigenous Nations so they can contribute effectively to sustainable resource management.

20. The boundaries of Indigenous Nations should be recognised in signage and other public information.
21. The use of traditional place-names should be encouraged, in consultation with Traditional Owners.
21. School curricula should include local Indigenous history.
22. The importance of Indigenous cultural heritage should be promoted in public information and education.
23. Cultural training should be undertaken at all levels of government and within natural resource management bodies.

## Attachment 2 MLDRIN Position Paper

### The Living Murray

The issues are those as determined by members of the Murray Lower Darling Rivers Indigenous Nations. Words as highlighted are icons to the core interests of Indigenous peoples.

### Issues Log for Indigenous Peoples

1. **Acknowledgement** of Indigenous connection to lands and waters is based on their own view of **Creation** and this is reflected within a **spiritual** web that is linked to important places and **ceremony**
2. **Elders** are held with Indigenous society with **respect** and this needs to be given **empowerment** through an effective **decision making role**. Their collective and individual **knowledge bank** has been passed on through many generations of living within their lands and waters. This knowledge or **intellectual property** and **values** need to be held and imparted with the utmost respect and protection.
3. **Indigenous Nations** need **recognition** and **respect** as having **inherent rights** that are unique to their country. It is the **responsibility** of each Nation to hold on to their **sovereignty**, their **autonomy** and their rights to **self-government**.
4. Indigenous Nations have the ability to provide **advocacy** through strong processes that provides **unity** and **co-operation**. A process that provides for their **united** voice. Indigenous Nations are committed to a shared vision for the future through ensuring **consultation on all levels** and **sharing of knowledge**.
5. Indigenous Peoples hold a holistic concept to their lands and waters which are seen as different to the western value systems. We can learn to **co-exist** through the development of **protocols** which acknowledge the unique interests of Indigenous Nations and its people. These can be incorporated within **processes and procedures** of natural resources wealth sharing which includes water with Indigenous Nations.

They include the need for:

- Recognising the need for **justice**
- Establishing a package of **rights**
- Development of **reparation** and **compensation**



- Embracing Indigenous **self determination**
- Development of an **economic base** for Indigenous Peoples
- Ensuring cultural and environmental **heritage protection** measures

Refer to: [www.thelivingmurray.mdbc.gov.au](http://www.thelivingmurray.mdbc.gov.au)

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# **Attachment 3 Responses from each Public Forum**

## **3.1 Albury Public Forum – 14 February 2003**

### **General Comments**

- There need to be natural cycles in the river – ebb and flow, dry and flood. The river is over-managed.
- The Basin's landscape needs to be approached as a whole – everything is connected. The key issue is management of the whole river system – not just environmental flows.
- Indigenous people don't want to be just consulted. They want to be a central part of decisions about the river system and part of management. They are intensely frustrated because they are the Traditional Owners, with custodial responsibilities under their law, but other people make the decisions about the river. They have never surrendered their custodial management rights.
- Public education about the issues is important so the need for action is understood.
- Indigenous people believe spiritual, cultural and environmental values are more important than economic values and must be taken into account in management decisions
- Big changes in farm management systems are necessary so agriculture becomes more sustainable. The country can't stand the high water and chemical use necessary for some crops.
- Involvement in natural resource management can create a new economic base for Indigenous people – monitoring, rangers, rehabilitation etc.

### **What is your vision for the River Murray?**

- The river should be healthy and free flowing.
- Traditional Owners should be heavily involved in management decisions and Indigenous people should be employed to deliver various programs.
- The whole river system should be respected.
- Everyone should come together to make the river healthy and protect its spirit – Indigenous people, landholders and government.
- Funding should be available to do what's necessary to make the river healthy.
- Knowledge should be shared.
- Natural cycles should be restored – the natural ebb and flow.
- There should be total landscape approach to management.
- The river system should be abundant with native fish, birds, animals and plants.

- Everyone should understand the importance of keeping the river healthy and what needs to be done.
- The river should be a focus for reconciliation.

### **What is the significance of the River Murray to you?**

- The river is critical to culture. Identity and spirituality come from country.
- The whole ecosystem is important to culture. Everything in the Basin is inter-related and it all makes up country. The wetlands have to be looked after and land clearing must stop.
- The river is part of song and story lines.
- There are burials all along the river.
- Water is life.
- There are many important sites – men’s places and women’s places, ceremony grounds.
- The river is a birth place.
- It is critical to health – a source of fresh water and medicines. It is also a healing place.
- The river system provides a rich variety of food.
- The river is a meeting place and point of connection between people and Nations.
- It is a trade route and highway.
- The river and its water should be respected. Changes now are disturbing it. There are faster flows and water is colder.

### **What are the values that should be preserved?**

- Cultural values are critical. The identity of Nations is attached to the water.
- Cultural and spiritual values depend on environmental values. Identity is attached to country.
- Cultural, spiritual and environmental values should have equal standing with economic values in management decisions and be included in the price of water.
- Traditional knowledge about the river system, and all the things that make it up, is invaluable. It should be respected and utilised.
- There are important social values. The river is a point of connection for people and nations.
- The river is important to health – a source of medicines and a place of healing.
- It is essential for education of youth about their culture.

- The river system has economic values. It provides food and fibre and can be a base for further economic development of Indigenous communities – nurseries, tourism.
- The river provided the socio-economic system for Indigenous Nations.

### **What is a healthy river?**

- The water should be clear and clean with no pollution. It should be drinkable.
- There should be natural flows with no barriers.
- Natural cycles should be restored so there are floods and dry periods.
- Extraction should be reduced.
- If the river is healthy, spirituality will be strong.
- There should be long-term management plans for sustainable use.
- There should be an abundance of native fauna and flora.
- Wetlands should be healthy.
- There needs to be a total landscape approach to management.
- Public education is important so people understand how to care for the river system.

### **What's wrong with the River Murray now?**

- The river is over-used. Too much water is being taken out and extraction must be reduced.
- Recreation needs to be controlled. The increase in boating and fishing means there are too many people on the river and cultural sites are being destroyed.
- The river is over-managed. There are too many dams and weirs. As a result, natural flows and cycles are reduced.
- There is too much pollution – chemicals, crop run-off, stock watering and rubbish.
- There are too many introduced species and pests, particularly carp.
- There should be buffer zones along the river to minimise damage and erosion.
- The river needs a good flush to get rid of blue-green algae and clean it out.
- Water use is inefficient. Some crops are inappropriate because they need too much water. More technology should be used eg drip feed irrigation.
- Management and regulation need to be improved. Too much water is wasted.
- Use of chemicals needs to be better monitored and controlled.

- Water used by industry should be re-cycled so it doesn't pollute the river.
- More public education is required so the community understands how to care for the river system.

### **How should the river's resources be used? What interests should be recognised?**

- Resources must be used in a sustainable way. They should be used sparingly, sensibly and with discipline.
- They should be shared by everyone.
- The river system should go back as far as possible to its natural state.
- The spirit of the river must be protected.
- Resources should not be locked up, but they must be used within their capacity.
- Indigenous people recognise the need for farming enterprises. However, farm management systems should be sustainable.
- Traditional Owners must be involved in all decisions about the future of the river system. Traditional Owners have custodial responsibilities for the country.
- Public education about sustainable resource is important.
- Research and science are essential to keep improving management and efficiency.

### **What are the specific areas of cultural significance along the River Murray?**

- The total ecosystem of the Basin is significant.
- Elders hold special information about some sites and places.

### **How should Indigenous interests in the River Murray be recognised?**

- Cultural Heritage Management Plans (CHMPs) should be developed by Indigenous Nations for their country.
- The CHMPs should have the force of law and be incorporated into each regional/catchment plan for resource management.
- Each Nation should manage and implement its own CHMP. Funding should be provided for this purpose.
- Indigenous people should be employed to implement the CHMPs. Training programs need to be available.

- Traditional Owners should be represented on every natural resource management body that works within their boundaries and be involved in decisions right from the beginning. There should be support networks and resources for the Indigenous representatives.
- There should be public education programs about the custodial responsibilities of Traditional Owners and cross-cultural training at all levels of government.
- Indigenous Nations should be granted water allocations in recognition of their custodial responsibilities for the river system.
- Traditional knowledge should be respected and valued. It should be protected as an Intellectual Property Right.
- There should be protocols with Indigenous Nations about how they wish to engage with government and the community. Public funding should be available to negotiate and develop the protocols.

## **3.2 Buronga Public Forum – 7 February 2003**

### **General Comments**

- Traditional Owners are angry that they have not been involved and listened to in the past.
- Industry and government have not respected the river system – it is in poor health now.
- A healthy river is needed for healthy communities.
- The river is just one part of the equation – the whole Basin needs to be considered.
- Tree clearing is a critical issue – rain won't come if all the trees have been cut down.
- Snowy River Hydro is part of the problem. They only release snow water when they can maximise their profits from electricity.
- Management decisions and water pricing should take environmental and cultural values into account. They only consider economic values now.

### **What is your vision for the River Murray?**

- The river should be preserved for future generations.
- It should be a healthy, living system with natural flows and cycles.
- It should have World Heritage listing.
- Water from the river should be clean and drinkable.
- The river should be supporting communities on a sustainable basis into the future.
- We need to “keep it flowing, keep it going.”
- There should be plenty of native fish, yabbies, mussels, birds, plants and animals.

### **What is the significance of the River Murray to Indigenous People?**

- The whole river system is important. It sustains country and nurtures families.
- The river system is central to Indigenous cultural heritage and spirituality.
- The river carries Dreaming stories, songs and tribal traditions. There are burial sites, middens, ceremony sites. River red gums have particular significance.
- The river is important as a food source – fish, yabbies, mussels, eggs, seeds, animals and plants.
- It also is important as a source of medicines and healing.

- The river's resources are important for future generations.
- Wetlands are a nursery for biodiversity and need to be protected.
- The river is a point of connection for different Indigenous nations.

## **What are the values of the River Murray that should be preserved?**

- Preservation of cultural values is the number one priority.
- Economic values also are important – the river provides food and other sustenance. There are potential economic benefits for Indigenous people from eco-tourism and cultural tourism.
- The river has health and healing values. It is a source of bush medicines. Clean water is essential for healthy communities.
- It also has social significance. It connects Indigenous nations and provides recreation.
- “The river is our life. We can't survive without it.”
- The river system needs to be considered as a whole – all the tributaries and wetlands. The whole Basin needs to be approached as an inter-connected ecosystem. Everything has its place.

## **What is a healthy river?**

- The issue is the health of the whole ecosystem.
- The river system will only be healthy when its resources are used in a sustainable way.
- “We should be able to hear the frogs. There should be no algae on the turtles. There should be plenty of mussels, yabbies and shrimps.”
- The water should be clear and blue.
- There should be free migration of native fish species.
- Introduced species like carp and willow trees need to be removed.
- There should be natural cycles and floods. The river should flow – there should be no stagnant areas and no blue-green algae.
- There should be no black mud on the bottom of the river.
- Salt levels must be reduced.
- Pollutants must be removed.



## **How should the river's resources be used? What interests should be recognised?**

- The river's resources should be used in a sustainable way.
- There should be public education about how to use resources sustainably.
- Resources need to be managed in a more efficient way. Flood irrigation is very wasteful. Technology such as drip feed irrigation should be used.
- There should be strict penalties if resources are misused and the penalties must be enforced. There must be effective monitoring of regulations.
- Farmers will stay, but their management systems must change.
- The price of water should reflect environmental costs. The price of water needs to be increased so it is used more efficiently.
- Governments and their agencies must operate in a better way. There needs to be a whole of government approach to the Basin. There should be greater integration and coordination of programs and partnerships with the community and Traditional Owners. Financial resources should be pooled.
- Management needs to be re-educated. Traditional knowledge should be respected.
- Water used by industry should be recycled. "Gray water" should be used more efficiently.
- "Whitefellas should not talk for blackfellas."

## **What's wrong with the River Murray now?**

- There is not enough water in the system. Water has been over-allocated.
- There is not enough water for a proper flush of the system so there's lots of blue-green algae.
- The river system is polluted.
- The river is saline and salinity is poisoning the ground in the Basin.
- Water quality is poor and the water is undrinkable.
- Natural cycles and flows have been disrupted so wetlands and lagoons are affected..
- Introduced species (carp, willows etc) are killing off native species.
- Erosion is a big problem. It is being caused by artificially high flow rates, keeping river levels high, land clearing, high use (boats etc), and carp.
- Illegal fishing is reducing native fish numbers.
- Traditional Owners do not have access to all of the river. They cannot visit significant sites and areas. They are unable to exercise their traditional rights to hunt and fish.

- As a result, Elders cannot teach youth and young people are losing their culture.

## **What are the specific areas of cultural significance along the River Murray?**

- All of the river system has high significance. Everything is connected.
- There are some places that are special. Elders hold knowledge about them.

## **How should Indigenous interests in the River Murray be recognised?**

- “We need to plan for everybody.”
- There should be sustainable natural resource management plans so commercial water use is regulated and monitored.
- Cultural Heritage Management Plans (CHMPs) should be developed by each Indigenous Nation for its country. They should have the force of law.
- The CHMPs should be incorporated into each regional/catchment plan for resource management.
- The CHMPs should be developed and managed by Aboriginal Nations.
- Indigenous people should be employed to implement the CHMPs.
- Indigenous Nations should be represented on each natural resource management body within their boundaries. They should be a foundation of management bodies and central to their decision making.
- There should be adequate resources for negotiation, development and implementation of CHMPs and regional/catchment plans.
- Natural resource management bodies should employ Indigenous people to manage and rehabilitate country. Training programs should be available for this purpose.
- There must be a whole of government approach to natural resource management.
- Traditional knowledge and law should be respected and accepted. It should be protected as an Intellectual Property Right.
- There should be water allocations for Indigenous Nations. This would help Traditional Owners exercise their custodial right to care for the river system. If the river is healthy, allocations could be used to generate greater economic independence and self-determination.
- Industry should not be compensated for any loss of water allocations. However, there should be government assistance for water users to make their management more efficient.
- There needs to be public education so everyone is aware of what needs to be done, and so the importance of Indigenous cultural heritage is recognised.

### **3.3 Menindee Public Forum – 9 February 2003**

#### **General Comments**

- Traditional Owners are angry and frustrated that their advice and knowledge have been ignored in the past. “We said there should be no more clearing. We said there should be no more dams. We said they shouldn’t use big pumps. Now the river is sick and it’s all a mess.”
- However, the initiative by the Ministerial Council and MDBC to engage with Indigenous communities is welcome. “We just hope it isn’t too little, too late. We just hope they will listen to us this time.”
- Indigenous families were shifted to allow construction of weirs, locks and dams. They were removed from their traditional country.
- The need for everyone to share water is accepted. “The river provides life to everyone.”
- But the way in which water is shared must change. There is no value placed now on the cultural and environmental components of water. Their values are just as important as economic values. There must be value attributed to food, bush medicines, connection and important cultural places.
- Indigenous culture is cemented in the environmental values of the river’s whole Basin. If the river is sick, culture is sick. That’s the case now. A breakdown in culture is leading to a breakdown in the social order – substance abuse, violence.
- Indigenous people need access to the river to protect their culture and for hunting and fishing. Access is important to protect burials and sites and for ceremonies.
- The way in which Indigenous Nations engage with government and the community must be culturally appropriate. There should be a big meeting of all the Traditional Owners along the river. They all should work together.
- There needs to be more water in the river. The reference points from the Ministerial Council don’t go far enough. There will need to be compulsory acquisition of water, as well as more efficient use.
- Government needs to act more cooperatively and there should be better coordination and integration of all the government programs.

#### **What is your vision for the River Murray?**

- The water should be clear and drinkable.
- Natural flows and cycles are restored and native fish, plants, birds and animals abound.
- The river should provide life to all and be protected for future generations.
- Environmental, cultural and spiritual values should be given equal weight to economic values in management decisions.
- Traditional Owners should be involved in all decisions from the beginning and not just a rubber stamp.
- Everyone cooperates to keep the river healthy.

## **What is the significance of the River Murray to Indigenous people?**

- The whole river system has huge cultural significance. It is central to Dreaming and creation stories. It contains burials, mounds, significant sites, ceremony and initiation grounds, men's and women's places, middens, scar trees, camping and meeting places. "It is our life."
- Indigenous people have a special spiritual connection to the river. It gives them identity and connection. It contains their history.
- The river has economic importance – it provides food, water and sustenance.
- It is important to the health of communities. Healthy communities depend on healthy water. The river also provides medicines, healing and spiritual balance.
- It has social significance. It provides social connection and recreation and is important for language.
- The river system must be considered as an integrated whole. Everything is connected – tributaries, wetlands, flows and cycles, fish, birds, plants, animals and the seasons.
- The river system is important to educate youth. That is harder now because access is restricted.

## **What are the values of the River Murray that should be preserved?**

- Cultural and spiritual values – see previous section.
- Water quality is paramount. Good water is critical for a healthy community.
- Natural and environmental values. A natural landscape is integral to Indigenous culture and spirituality. Cultural and spiritual values depend on natural values.
- The river has economic values. It provides food and sustenance and economic opportunities such as eco-tourism and cultural tourism.
- It has social values – recreation and connection between people and nations.

## **What is a healthy river?**

- Water should be clean and drinkable. Salinity should be under control.
- There should be natural flows and cycles. There should be no blue-green algae. Wetlands should be healthy.
- There should be an abundance of native wildlife and vegetation – reeds, catfish and birds.
- Introduced species should be under control, particularly carp and willows.
- Industry should use the river's resources in a sustainable way.
- Management and use should be efficient, according to best management practice.

- The river should not be polluted. It should be free of rubbish.
- There should be less erosion and greater control over stock watering.
- “We should be able to see a catfish nest.”
- Everyone with an interest in the river should be working together – Traditional Owners, landholders and all levels of government.

## **How should the river’s resources be used. What interests should be recognised?**

- There should only be sustainable use. The river’s resources need to be preserved for future generations.
- The benefits provided by the river should be shared equally. The biggest slice should not go to multi-national companies that take their profits overseas. Benefits should be spread across local communities.
- The central interests of Traditional Owners must be recognised. They have custodial responsibilities for the country under traditional law. Management decisions must recognise and protect Aboriginal culture.
- Indigenous people should have access for hunting and fishing, to protect sites and burials, and for ceremonies. There should be “rights of passage” for them.
- Indigenous Nations should have water allocations so they can meet their traditional responsibilities.
- Management decisions should treat the Basin as a whole ecosystem. Everything is inter-related.
- Traditional knowledge should be respected. It can contribute to better management and sustainable use.
- Traditional knowledge should be protected as an Intellectual Property Right.
- Industry has interests, but should operate in a sustainable way.
- There are sustainable economic opportunities for Indigenous people – cultural tourism, eco-tourism, bush medicine, bush tucker.
- There are social and recreational interests. The speed of boats should be controlled to reduce erosion of the river banks.
- The river has an important education function. It is a place for the Elders to talk to youth and for Indigenous people to talk to non-Indigenous people.

## **What’s wrong with the River Murray now?**

- Too much water is being taken out for irrigation. Water is over-allocated.
- There’s not enough water for natural flows. It needs a good flush to get rid of the blue-green algae.

- The Upper Darling is affected by management decisions about the Basin. The issues are not just confined to the Murray and Lower Darling.
- Water use should be reduced. It needs to be used more efficiently. Management is poor.
- Water quality is low. Water is undrinkable.
- There's too much pollution from salt and chemicals. There's not enough oxygen in the water.
- Pollution needs to be regulated properly and the penalties should be strictly enforced. There needs to be investment in new technology and much better monitoring.
- Introduced fish and plants are taking over from natives – particularly carp and willows. Native aquatic plants are affected. There are no catfish or frogs.
- Salinity is everywhere. “There are salt stains on the grapes and vines.”
- Environmental costs are not reflected in the price of water. Cultural and environmental values are just as important as economic values.
- There is no whole of government approach. Inter-state water agreements should be reviewed.

### What are the specific areas of cultural significance along the River Murray?

- The whole river system and Basin has high significance.
- Elders have special knowledge about some important places.

### How should Indigenous interests in the River Murray be recognised?

- Traditional Owners should play a central role in all decisions about natural resource management in the Basin.
- They should be represented on all natural resource management bodies within the boundaries of their Nation.
- Decisions about resource management should be made in a way that is culturally appropriate. Each Nation should decide how it wants to engage with government and protocols should be developed. The MLDRIN MOU is a good starting point.
- The decision making process should empower Elders.
- There should be resources to provide support to Indigenous representatives on resource management bodies, including mechanisms for them to gain authority from their Nation. This will entail meetings of Traditional Owners.
- Each Indigenous Nation should develop a Cultural Heritage Management Plan (CHMP) for their country. The CHMP should have the force of law and be part of each regional/catchment plan for resource management.
- Each Nation should have responsibility for implementing its CHMP and employ Indigenous people for this purpose.

- Natural resource management bodies should employ Indigenous people to protect cultural heritage and rehabilitate country.
- There should be protected areas along the river where there is no professional fishing or boats.

## **3.4 Murray Bridge Public Forum – 5 February 2003**

### **General Comments**

- Participants pointed out that they have traditional custodial responsibilities for the river, but the public forum was the first time they had been asked to contribute to policy and management decisions.
- They questioned whether the MDBC approach was sincere and whether non-Indigenous people would listen to Indigenous views and advice.
- They regard input to management of natural resources as an essential component of cultural heritage protection and self-determination.
- “Respect” for the land and waters and Indigenous cultural heritage must be the cornerstone of the MDBC’s and Ministerial Council’s approach.

### **What is your vision for the River Murray?**

- The river should be alive and healthy.
- It should be free flowing, with natural cycles of flood and dry.
- The river system needs to be re-stocked and re-vegetated with native fish, plants and animals.
- There should be access rights for Indigenous people for hunting and fishing.
- Indigenous people should be able to move freely to continue their cultural practice.
- The attached poem was felt to encapsulate many people’s vision – Spirit of the Murray.

### **What is the significance of the River Murray to Indigenous People?**

- The river has enormous spiritual and cultural significance – song-lines, traditional stories (Dreamtime), burials, sites of significance, particular formations, ceremony grounds, camping areas. The whole river system should be registered as a significant Indigenous site.
- All of the river system is significant – wetlands, tributaries, total catchment area. The total biodiversity must be considered – water, birds, animals and fish all are inter-related.
- It provides life – food, water, vegetation.
- It is central to the survival of communities. The purity and quality of water are central to community and environmental health.
- It provides social connection and meeting places for different nations.
- The river should be recognised and accepted as a “cultural economy”, which has declined as the health of the river has declined. There has been a reduction in the quantity and quality of fish, yabbies, plants and animals. Some species have disappeared completely. As this has occurred, there has been greater reliance on other forms of income, mainly welfare, to survive.



- The river provides some commercial opportunities eg cultural tourism and can be a component of economic development and self-determination..
- It is critical to cultural education of Indigenous and non-Indigenous people.
- Language is important. Instead of using terms like “wetlands”, “swamps” and “marsh”, the term “nursery” should be adopted. The term “stakeholders” should not be used for Indigenous people – “Traditional Owners” should be used instead. The word “Aboriginal” should not be used – Indigenous people should be recognised by their traditional Nations.

## **What are the values of the River Murray that should be preserved?**

- Indigenous cultural heritage, language and dreaming. Customary rights must be recognised, protected, preserved and respected.
- Biodiversity of the total catchment and respect for the land and waters.
- Social values, including opportunities for connection between Indigenous peoples and between Indigenous and non – Indigenous people (can assist reconciliation).
- Economic values. However, economic activity must be sustainable. It might include sustainable agriculture, eco-tourism, cultural tourism, fishing, bush tucker and bush medicine, seed collection and propagation. Training and employment are needed for Indigenous communities to develop a more independent economic base and protection of Indigenous intellectual property rights is essential.

## **What is a healthy river?**

- Where the total river system is respected.
- Alive and free flowing.
- Natural cycles of flood and dry apply.
- Pollution free – the water is clear and drinkable, with natural filtration (bullrushes, rocks, reeds).
- Stock usage is controlled and livestock prevented from polluting the water. This will require education of landholders and fencing programs.
- Plentiful wildlife, plants, bush tucker.
- No introduced species eg carp, willows.
- All unnecessary obstructions are removed.
- Industry activity is sustainable – better management of water resources, more efficient usage, controls on water usage, the price of water reflects cultural and environmental values as well as economic values.
- Salt and salinity are controlled.
- Existing legislation to protect the river is enforced.

How should the river's resources be used? What interests should be recognised?

- The river's gifts should be respected.
- All interests and people should be recognised.
- The only use should be sustainable use. This will entail effective controls and monitoring, accurate pricing (to reflect cultural and environmental values), better use of technology (eg drip feed irrigation) and collection/recycling of "grey water". There was strong opposition to flood irrigation.
- Indigenous interests must be recognised. There should be water allocations for Indigenous communities that can assist economic growth and independence.
- The first priority should be human consumption.
- Biodiversity of the total catchment must be maintained.
- There should be collaborative approaches between Indigenous peoples, landholders and government to identify and implement sustainable practices and vegetation.

### **What's wrong with the River Murray now?**

- It is not being treated with respect.
- It is polluted.
- It is over-allocated.
- Management needs to be improved. Buck passing between the States and the States and the Commonwealth reduces outcomes.
- Salinity is high and the water table is rising.
- There is lack of historical knowledge.
- Infrastructure is poor.
- There is no "whole of government" approach. Those upstream don't take responsibility for their actions.
- Cultural values have been eroded.
- Local knowledge is not respected and utilised.
- There is not enough public education about the importance of the river system and how to keep it healthy.

What are the specific areas of cultural significance along the River Murray?

- The entire river system is significant. Everything is connected to everything else.
- Elders hold special knowledge about some places.

## **How should Indigenous interests in the River Murray be recognised?**

- Protocols should be developed between Indigenous Nations, government and the community about how to do business.
- Cultural Heritage Management Plans (CHMPs) then should be developed by each Nation for the area within its traditional boundaries.
- The CHMPs should have the force of law.
- The CHMPs should be administered by Indigenous Nations and Indigenous people should be employed for this purpose.
- The CHMPs should be incorporated into each regional/catchment plan for management of natural resources.
- Each Indigenous Nation should be represented on all the natural resource management bodies that operate within its traditional boundaries.
- Indigenous facilitators should be employed by natural resource management bodies.
- Training programs should be available to enable Indigenous Nations to participate in natural resource management.
- Necessary resources should be available to develop and implement protocols and CHMPs; employment of Indigenous rangers and facilitators; training programs; support networks for Indigenous representatives and community capacity building.
- Existing legislation should be reviewed and amended if necessary to give effect to these aspirations.

## SPIRIT OF THE MURRAY

Just sitting here, gazing at the mist amongst the trees, watching the “Gray Water” of the Murray – did it always use to be?

The fine rain is drifting like a light cotton cloud, and I hear my spirit calling. I cry out aloud.

“Oh Spirit of the Murray, great Ponde, where are you? Man has wrecked the Murray and is poisoning you too,

With barrages, locks and weirs, the river cannot run, the endless sight of houseboats,  
Great Ponde, what have we done?

In the days of Ponde Dreaming, when the natives walked the land,

The Murray was crystal clear, not interfered with by man.

The Dreamtime is forever, passed down as we go.

But not the mighty Murray. Man has stopped her flow.

The Ngarrindjerri people along your banks would roam.

You gave them food and water, to them you were their home.

They used to dive for mussels and make baskets from your reeds.

If they pulled up plant life, they would replace it with seeds.

Most backwaters have been reclaimed, with cattle left to graze,

With crops of wheat and rice, sometimes even maize.

They are irrigating cotton and sending their toxin back to you,

Oh Mighty Murray River, what are we going to do?

The Spirit of the Murray is still so strong and free.

Memories of Ponde Dreaming will always stay with me.

So I sit here and watch the Murray, in the place I call my home,

And I think of the Murrundi Ponde, and how the natives used to roam.

We have to save the Murray. We have to let it run

And stop the toxin waste, now we can see what man has done,

The Mighty Murray needs us, it is up to us who care,

Our only natural resource, and the Ponde still live there.

Composed by Rayleigh Burgess

## **3.5 Swan Hill Public Forum – 12 February 2003.**

### **General Comments**

- Government should have been listening to Traditional Owners a lot earlier.
- The Ministerial Council and the MDBC should receive a delegation from Traditional Owners to discuss all the issues.
- The river system needs a big flush. There should be reference points above 1500 gl for environmental flows.
- There should be resources to provide support for Traditional Owners so they can participate equitably in natural resource management.
- Traditional knowledge should be respected. It can make an important contribution to management of the Basin.
- Traditional knowledge should be accepted as an Intellectual Property Right. Indigenous people should be paid for its use.
- Farmers need to diversify and change their management practices so they use less water and use it more efficiently.
- There should be consultations with Traditional Owners before any earth is moved for construction of Basin infrastructure eg barriers, dams etc. Unless this occurs, cultural heritage could be destroyed.

### **What is your vision for the River Murray?**

- It should be a healthy, sustainable system that everyone can use.
- It should be protected for future generations.
- There should be a long-term concrete commitment by government and the community to solving the problems. “We’re committed. So should the government be.”
- Indigenous people should be employed to assist in management of the river system.
- Youth should be educated and trained to take over custodial responsibilities.
- Cross-cultural training should be introduced at all levels of government so there is better understanding of the importance of country to Indigenous spirituality and culture.

### **What is the significance of the River Murray to you?**

- The river system is central to spirituality and culture. “It is our lifeblood, our life.” It provides identity and spiritual connection.
- It holds Dreaming and creation stories and contains many important sites, burials and middens. There are many artefacts and scar trees.

- The river is a highway for Indigenous Nations.
- It provides social connection to Nations and recreation.
- It is important to health. Communities need clean water. The river also provides many medicines.
- It is an important food source – fish, yabbies, mussels and ducks. Food and resources are shared.
- The Basin is a single ecosystem. Everything inter-connects.
- The river system holds the history of Indigenous Nations.
- The river is a meeting place.

### **What are the values that should be preserved?**

- Cultural heritage values are the most important – see previous section.
- The natural and environmental values are critical. Culture and spirituality depend on the natural landscape and are eroded as it is degraded.
- The river system has economic value as a source of food and sustenance. It also provides some opportunities for employment and economic development – eco-tourism and cultural tourism.
- The economic position of Indigenous people has been reduced by the poor health of the river system. There is less food available and therefore greater dependence on welfare. “The river used to feed us – not anymore.”
- The river has social value as a point of connection, a meeting place, a source of medicines, and for recreation.
- Water quality is essential to the health of communities and the river’s ecosystem.

### **What is a healthy river?**

- The water should be clear, clean and drinkable.
- The grasses should come back.
- There should be an abundance of native fish, plants, birds and animals. There should be plenty of yabbies and mussels.
- There should be no pollution from industry.
- Introduced species should be eradicated – carp and willows.
- There needs to be a total ecosystem approach to management. Everything depends on everything else.
- Land clearing should be stopped. It makes it harder to rain and increases salinity.
- Education programs are required so the community knows how to care for country.

## **What's wrong with the River Murray now?**

- Management is not good enough. Regulation of effluent and crop run-off is poor. Water quality should be monitored properly and tested regularly.
- Water is polluted.
- Flows need to be increased to flush out the system.
- There should be natural cycles in the river – periods of flood and dry.
- There is not enough water in the river system. Too much water is being taken out. Water use must become more efficient. Assistance should be available for this purpose.
- There is some illegal use of water – it is stolen. There should be much better monitoring of water use.
- Irrigation water should be re-cycled and should not pollute the river system.
- Governments buck-pass and don't act quickly enough to solve the big issues like the Murray Darling system. They need to accept their responsibility.

## **How should the river's resources be used? What interests should be recognised?**

- Resources must be used sustainably. There needs to be much better resource management.
- Industry is important, but it must be sustainable.
- The whole community needs to work together to make the river system healthy – Indigenous people, non-Indigenous people and government.
- Government needs to coordinate its activities and deliver a “whole of government” response to the problems.
- The river and the Basin should be treated with respect.
- The inter-connection between environmental, cultural and spiritual values needs to be recognised in management decisions.
- Community understanding of sustainable resource use is important. There should be comprehensive public education programs and school programs.

## **What are the specific areas of cultural significance along the River Murray?**

- The total landscape is significant. Every element is connected.
- Elders hold special knowledge about some places.

## **How should Indigenous interests in the River Murray be recognised?**

- Each Indigenous Nation should develop a Cultural Heritage Management Plan (CHMP) for its own country.
- The CHMP should become part of each regional/catchment plan for resource management.
- Indigenous Nations should implement their own CHMP. They should receive resources to negotiate and administer it. Indigenous rangers should be employed.
- Traditional Owners should be represented on all natural resource management bodies that work within their boundaries. Indigenous representatives need resources to consult properly with their people and make sure information is gathered and distributed in an appropriate way.
- Traditional knowledge can make an important contribution to improving the health of the Murray. Indigenous Nations should be involved in decision making right from the beginning.
- Traditional knowledge should be recognised as an Intellectual Property Right. Royalties should be paid for its use eg bush medicines.
- Indigenous Nations should be entitled to water allocations. This would help them to meet their custodial responsibilities and give them some extra economic options.
- There should be protocols for Indigenous Nations to engage with government and the community about sustainable use of country. The protocols would recognise Nation boundaries. The draft MOU between MLDRIN and the MDBC is a good step. Traditional Owners need a forum where they can all come together to discuss the issues and their responses.



# **Attachment 4 Responses from each Traditional Owner workshop**

## **4.1 Barkindji and Nyiampa Nations**

Mendinee, 9 February 2003

### **Vision Statement**

- Clean water.
- Better working relationships with government and other parties along the river.
- The beliefs and customs of traditional people to be understood and accepted and included in management policies.
- More traditional fish and bird life back in the river.
- Less irrigation.
- No sprays and chemicals in the waterways.
- The lake system back to its natural state.
- More environmental flows down the Darling River.
- Better structures in place for the management of the waterways.

### **What is the Significance of the Murray River to the Barkindji / Nyiampa Peoples?**

- It's our culture and life line
- Cultural and spiritual link to the Dreaming
- Provides us with our medicines and foods
- A place for ceremonies
- Hunting and fishing
- Sacred sites and burial grounds
- Men's places and women's places

### **What are the Values that should be preserved?**

- The water itself
- Cultural values, sites and trees
- Sacred burial grounds
- Women's places
- Men's Places
- Bora grounds
- Ochre pits
- The different languages along the river should be protected and looked after as the river brings all the languages together.
- Fish and yabbies
- Frogs are becoming less and harder to find.

- Vegetation along the banks is disappearing
- Cod and perch (native fish)
- Social aspects of the traditional people need to be respected and protected along the waterways.

### **What is a healthy river?**

- Clean water
- More fish in the river.
- More native vegetation along the banks and floodplains
- Flushing of the river, using environmental flows
- Abundance of bird and aquatic life in and around the river
- Clean water, for drinking and swimming
- Less salt levels in the water
- Less soil and debris in the water
- Abundance of crayfish
- When the frogs come back, then we know that the river is healthy again as there are so few frogs left.
- Irrigators should be made to change their ways and use best management practices.

### **How should the natural resources be used and what interests should be preserved?**

- Better management practices in place .
- People upstream should be made to look after the water, before it comes down stream.
- Water should be clean
- Traditional rights for hunting and gathering of traditional foods and medicines.
- Less pumps on the riverbanks.
- No clearing of the land near the waterways.
- Irrigators should be made to use better techniques in managing the water.
- Traditional tribal groups should have water rights within their own country.

### **What's wrong with the Murray River now?**

- The problem starts upstream.
- Cattle and irrigators are major problems.
- The water table is rising.
- Salt in the water.
- Introduced pests such as the carp and red fin , willow trees.
- Cotton and rice farming use too much water.
- Barmah choke needs to open up.
- More environmental flows need to be put into the river.

## **What are specific areas of cultural significance along the Murray River?**

- Burial grounds
- Birthing trees and women's places
- Men's places
- Middens and scar trees
- Canoe trees
- Dreaming connections along the river.
- Fish traps

## **How should Traditional interests in the Murray River be recognised?**

- There have been lots of meetings in the past but the government departments haven't listened to the Traditional Owners.
- Traditional people should have a meaningful management role concerning the river.
- Traditional rights and connections should be respected.

## **4.2 Mungatanga Elders**

Robinvale, 5 February 2003

### **Vision Statement**

- Clean and clear water.
- Water is passed on to the next tribe's country in a healthy state.
- More native fish and aquatic life in the river for us and other users of the river.
- Tougher laws put into place to stop irrigation and clearing on or near the rivers.
- Drainage catchments in place to stop run off from irrigators.
- To be able once again to go to the river in the warmer months and enjoy a good feed of yabbies, and crayfish in the winter months.
- No blue green algae in the rivers.
- To see natural floods come across the flood plains.
- A better understanding and working relationship between the government agencies and the traditional peoples.

### **What is the Significance of the Murray River to the Mungatanga Elders?**

- It is the lifeline of the people, no matter where they come from.
- If people live on the river then they are affected in one way or another.
- We have an obligation to the people down stream, just as the Mutthi Mutthi people up stream have the same obligation to us - the rivers have been managed for thousands of years that way.
- There are no longer native fish in the Murray in the same numbers as they were years ago - the Murray crayfish has declined.
- The MDBC has not recognised cultural issues and spiritual connection until now.
- The traditional vegetation along the river banks is disappearing and it is harder to find with the changing of the habitats.
- Green tree frogs and black frogs are no longer to be seen.
- Birds such as ducks and swans have nowhere to nest as all the swamp country and floodways no longer get flooded out.
- Fish traps are being destroyed due to constant high levels of water. We can't maintain the fish traps as we used to do.
- River banks are being eroded away due to constant high levels of water. Some flood plains are constantly under water.

### **What are the values that should be preserved?**

- Water Quality
- Trees
- Habitat
- Aquatic life
- Because there's blue green algae, we cannot swim in the river during the summer periods
- Logging of timber in the flood plains and along the river bank itself should be stopped.
- Speedboats on the river should be kept to certain areas to minimise erosion of the banks

- Cattle and stock should be kept away from the riverbanks to lessen the impact of erosion.
- Lagoons and swamps, creeks and flood plains should be nurtured by drying and wetting areas.

### **What is a healthy river?**

- More native vegetation along the banks and floodplain
- Flushing of the river, using environmental flow
- Abundance of bird and aquatic life in and around the river
- Clean water for drinking and swimming
- Less salt levels in the water
- Less soil and debris in the water
- Abundance of crayfish
- When the frogs come back then we know that the river is healthy again as there are so few frogs left.
- Irrigators should be made to change their ways and use best management practices.

### **How should the natural resources be used and what interests should be preserved?**

- The main resource that should be managed and looked after is the water itself.
- The entire ecosystem in and around the river needs to be maintained and looked after – if water is unhealthy, then everything else will only decline along with the river.
- Protected areas need to be in place along the rivers to allow fish and other aquatic life to recover from over fishing.
- The traditional peoples of a given area should be working with government departments.
- Native fish should be restocked into the waterways.
- Noxious animals, such as European carp, need to be removed from the waterways.

### **What's wrong with the Murray River now?**

- The river is in an unhealthy state.
- No natural floods.
- Little numbers of native fish.
- Aquatic life is disappearing at a rapid rate.
- Major increase of salt levels in the water.
- Sediments in the water.
- Irrigation is too close to the river itself and poisons from the spraying are entering the water.
- Speed boats are contributing to erosion of the river banks.
- Warm water is allowing blue green algae to become a major problem in the summer months.
- Willow trees are growing on the waterways, reducing oxygen levels in the water.

## **What are specific areas of cultural significance along the Murray River?**

- Midden sites along the waterways.
- Burial Grounds.
- Mounds in the flood plains and fire places.
- Ochre grounds.
- Traditional places, where ceremonies occurred.
- Women's sites.
- Men's sites.
- Dreaming and spiritual places.
- Canoe trees and scar trees

## **How should Traditional interests in the Murray River be recognised.**

- Recognition for the traditional people.
- Property rights for the Traditional Owners of the areas that are in their traditional tribal areas.
- There should be respect for the traditional people's knowledge of the area.
- An economic base should be there for the traditional peoples of that area.
- Compensation for the loss of utility for the traditional peoples.
- Government agencies should be workshopping more with the traditional people.
- Local government should be working with the traditional people.

## **4.3 Mutthi Mutthi Nation**

Balranald, 1 February 2003

### **Vision Statement**

- To be able to see the water that passes through their country – no blue-green algae.
- Able to drink straight from the river and have sandy beaches.
- Able to see the bottom.
- Water passed on to the next country in a healthy state.
- More native fish and aquatic life in the river for everyone.
- Increased access for Traditional Owners.
- Tougher laws to stop irrigation and clearing on or near the rivers.
- Drainage catchments in place to stop run off from irrigators and other farmers.
- To be able to enjoy a good feed of yabbies and crayfish
- To see natural floods come across the flood plains.
- Removal of noxious weeds and feral animals.
- A better understanding and working relationship between government agencies, water users and the traditional peoples.
- Greater employment of traditional people in management and rehabilitation of the river.
- Able to meet with other Traditional Owners so all the issues can be brought together throughout the river system.

### **What is the Significance of the Murray River to the Mutthi Mutthi Peoples?**

- It is the life line of the people
- The river means everything – it is our culture.
- Our culture depends on a clean healthy river.
- We belong to the river and land – they don't belong to us
- We have a strong spiritual connection to the river. It is part of our Dreamtime. It gives us our totems.
- Our spiritual connection is being affected because traditional owners don't have access to all the river.
- The river provides medicines - the healing we use Old Man Weed for needs to be done by the river
- The river provides food – we can't get fresh mussels and turtles now. We can't get duck eggs and witchity grubs because they need natural floods and that doesn't happen any more. Spawning happens just before natural floods.
- We can't get clay from the river banks to cook the fish and heal our skin – this is a big part of women's business.
- Fish traps have been destroyed. Some are constantly covered by water. Others are exposed so people break them up.
- Traditional vegetation along the river banks is disappearing.
- Green tree frogs and black frogs can't be found any more.
- There are much fewer native fish in the river.
- Now we re-stock the river with fish from other places. They don't belong – they don't have souls. They don't taste the same when they don't belong and don't have souls.

- We used to get a lot of pelicans – not any more.
- People can't take from the river all the time. Sometimes we have to give something back.
- There is a cultural obligation to provide clean water to those downstream. That is how the rivers have been managed for thousands of years.
- Everyone depends on the river and is affected one way or another by its health.
- The natural creeks have gone. We used to teach our kids how to swim and fish in the creeks before going to the main river. Yanga Creek isn't there any more.
- River banks are being eroded away by constant high levels of water.
- Birds such as ducks and swans don't have anywhere to nest any more because there's no floods. Swamp country is drying up or flooded all the time – the natural flows and cycles are gone.

### **What are the values that should be preserved?**

- Water quality – the water itself. We should be able to drink it and fish should be able to live in it.
- No current in the river means there's no life.
- Trees and vegetation.
- Habitat.
- Aquatic life eg turtles.
- Cultural sites – women's places and men's places.
- Traditional heritage
- Bora grounds.
- Burial grounds.
- Everything about the river is of value to the Mutthi Mutthi.
- Leave the snags in for the fish.
- The lagoons and swamps, creeks and flood plains need to be restored with natural flows and cycles.

### **What is a healthy river?**

- Strong natural flows – having water come down the river.
- More native vegetation along the banks and floodplains.
- Where it is flushed out regularly.
- Abundance of bird and aquatic life in and around the river.
- Clean water for drinking and swimming.
- Less salt levels in the water.
- Less soil and debris in the water.
- Stop logging and clearing of native vegetation.
- Water flows without chemicals.
- Where there is water on the flood plains.
- Abundance of crayfish.
- When the frogs come back then we know the river is healthy again.
- Traditional burn offs in the flood plains to lessen the amount of silt, soil and debris entering into the waterways.
- No irrigation on the river banks.
- No blue-green algae. We can't swim in the river in summer months because of the algae.
- Noxious animals, such as the European carp, need to be removed from the waterways.



## **How should the natural resources be used and what interests should be preserved?**

- The main resource that should be managed and looked after is the water itself.
- The entire ecosystem in and around the river needs to be maintained and looked after. If the water is unhealthy, then everything else will decline along with the river.
- Protected areas need to be in place along the rivers to allow fish and other aquatic life to recover from the over fishing – four year ban on fishing and ten years on crays and yabbies to give them time to regenerate.
- Cattle should be kept off the river banks. If farmers want stock water, they should pump it to troughs.
- Irrigation should be halved.
- There should be designated areas for speedboats. Their speed should be limited. They erode the banks, wash up little fish and shrimp and make it impossible to fish or just enjoy the river.
- Artificial creeks should be closed down – they're just evaporators. Put pipes in, but make sure they can't swallow the fish.
- The traditional peoples of a given area should be working with government departments.
- Native fish should be restocked into the water ways.
- We need to fix the Murrumbidgee first before the Murray can be helped.
- We won't have any resources if things keep going the way they are now. If we can fix the rivers, we can guarantee resources into the future.

## **What's wrong with the Murray River now?**

- The River is unhealthy – it's sick, sad and lonely for its natural environment..
- There are no natural flows and floods.
- The water is too warm and shallow.
- Creeks have been cut off.
- Floodplains need floods.
- Billabongs and lakes need to be re-filled.
- All the trees that do the job of keeping the river clean are gone.
- There's no ducks, swans or snakes.
- There's no yabbies – “the last feed of yabbies I had from around here was in 1981.”
- Too few native fish - aquatic life is disappearing at a rapid rate.
- Water quality needs to be improved – “it looks like sullage water from my kitchen sink.”
- They flood the grazing land and then just let this flow back into the river.
- Locks are stopping the river.
- We need water in the Barmah but it is being kept there too long. It turns into black water with no oxygen and kills the crays and fish.
- There has been a major increase of salt levels in the water.
- There's too much sediment in the water.

- Cropping is too close to the river and the poisons from spraying are entering the water.
- Willows are everywhere.
- Speed boats are contributing to erosion of the river banks
- Warm water means blue green algae has become a major problem in the summer months.
- Water in the back areas, such as the lagoons, swamps and creeks is becoming stagnant because there are no natural flows.
- There's a significant impact from towns – drains, chemicals, cigarette butts.
- Lack of access for traditional owners to maintain spiritual connection and hunt bush tucker.
- We've never had a forum before where the Mutthi Mutthi can talk about the river. This should be written down in a brochure like the "Living Murray."

### **What are specific areas of cultural significance along the Murray River?**

- All areas are significant.
- Midden sites along the water ways.
- Burial grounds eg Yanga Lake that need to be protected.
- Mounds in the flood plains.
- Fire places.
- The clay pans, but they have dried up.
- Ochre grounds .
- Traditional places, where ceremonies took place.
- Women's sites.
- Men's sites.
- Dreaming and spiritual places.
- Lakes.
- Canoe trees and scar trees.
- Deep holes and bends where mystical creatures and people live.

### **How should Traditional interests in the Murray River be recognised?**

- There should be a cultural plan put in place for the entire Murray River and its connecting rivers.
- Mutthi Mutthi people should be employed to write the plan for their section of the river.
- Mutthi Mutthi people need to be recognised as having cultural rights to the river and compensated if they lose these rights.
- The traditional people who live and have a birthright from the area should have a say in the management of the resource, to ensure it's there for future generations.

- Traditional knowledge must be respected and used to manage the river better.
- Traditional Owners should be able to have economic benefits from the river eg water allocation, growing/spawning fish.
- There should be recognition of Traditional Owners through MOUs, legislation, partnerships, local planning, a cultural heritage management plan.
- Government agencies should workshop these issues with Traditional Owners.
- Local Government should give recognition with signs, walking paths etc.
- Mutthi Mutthi people would like their own book like “The Living Murray” so everyone understands their role.
- Traditional Owners should have better access to the river. They should not have to use public access points because they have some business/activities that is private.

## **4.4 Wamba Wamba & Wadi Wadi Nations**

Swanhill 18<sup>th</sup> December 2002

**NOTE: Representatives of both Wamba Wamba and Wadi Wadi gave separate vision statements with the remaining questions answered in one voice.**

### **Wadi Wadi Vision**

That the Black Cockatoo returns to our country. Recognition of the creation stories relating to the Murray Cod making the course of the rivers. That the Murray Cod can only exist if the flood regime and environmental flows are reflective of the seasons, to allow for their free passage along the whole river system the cod needs to continue through to the mountains to the sea.

### **Wamba Wamba Vision**

The creation of Indigenous peoples is linked to the river and traditional owners need to be respected and be able to have say in its future. River to be brought back to its natural flow a balance needs to be made to reflect its spiritual life.

### **What is the significance of the Murray River & its tributaries to the Indigenous people?**

- Creation stories are a part of the river
- Maintain fish passage to protect creation
- Cultural heritage
- Sacred sties
- Food source
- Balance
- Spiritual connection
- Our lives are connected to the river as well as our emotional wellbeing
- Gathering place
- Camping grounds

### **What are the values of the river that should be preserved?**

- Flood plains
- Box trees, red gums, she-oaks and acacias communities be maintained
- Water regimes, river patterns are linked to seasonal activities
- plants
- animals

- fish
- birds
- Cultural resources relates to timing and seasons
- High in winter low in summer
- Floods should occur at least every 3 years
- Flood duration should be 6 months
- Ceremony and family
- Cultural heritage
- Sites and places of significance
- Nyah Forest
- Piamble floodplain forest
- Lake Tyrell
- Kow Swamp
- Gunbower-Perricoota
- Koorangle
- People need to be preserved as our life is dependant on the river
- Indigenous people are the river and should be included in preservation

### **What is a Healthy River?**

- Clean, resourceful river
- Fish, medicines, birdlife, swan eggs, mussels etc
- Drinkable potable water in the river
- Chemical free
- Cultural resource
- Sustaining Indigenous communities along river
- Sharing resources in times of hardship
- Maintains health, emotional and physical

### **How should the river resources be used?**

- Community decision
- Recognition that Indigenous definition of resources are not the same as mainstream view
- Indigenous peoples / traditional owners should have say over the use of any resources including
  - water allocation
  - management
  - water quality

### **What interests should be recognised?**

- Indigenous traditional owners
- Family groups
- Elders

- Respect
- Inherent Rights
- Self Government
- Unique Indigenous Governance process

### **What's wrong with the River Murray now?**

- Polluted
- Spiritual connections of Indigenous peoples not recognised
- Losing spiritual connections to living world
  - plants
  - animals
  - Indigenous peoples
- Water in hands of individuals and multi national companies
- Environmental flows not a reality
- Environmental flow not enough
- Natural flows have been removed
- Environmental flows not coordinated to Indigenous practices
- Science of natural resource management does not incorporate Indigenous cultural knowledge

### **How should Indigenous traditional owner's interests be recognised?**

- Management plans need to incorporate Indigenous perspectives
- Indigenous interests should be a priority
- Inclusion of Indigenous interests within policy, framed in legislation
- Valid processes and procedures for Indigenous rights and interests
- Management plans include Indigenous interests at the local traditional owners level
- Native Title rights to be recognised and enacted outside of litigation
- Indigenous traditional owners need funding, resources and capacity building at the traditional owners Nation level
- Cultural resources relates to timing and seasons
- High in winter low in summer
- Floods should occur at least every 3 years
- Flood duration should be 6 months

### **Special considerations**

Compensation should be made available to Indigenous Nations for loss of livelihood and disruption to enjoyment of our spiritual and cultural life.

## 4.5 Wamba Wamba Nation

Deniliquin 28<sup>th</sup> January 2003

NOTE: The people represent at this meeting held responsibility for country within Nth East section of their traditional lands in NSW and not directly on the Murray River the Edwards being their main tributary.

### VISION STATEMENT

“For the Murray River & its tributaries to come back to life from the reeds to the insects”.

“Since we were created in the Dreamtime by our Spiritual Ancestors, the land, water and cultural places have continued to sustain all life in a naturally balanced way.

Our people have continued to respect and care for our land and waters in a way that sustained and maintained that balance.

The scales are now unbalanced, and our Ancestors are unhappy and restless. They will stay this way until balance is restored.”

### What is the significance of the Murray River and its tributaries to the Wamba Wamba peoples?

Participants commenced by naming the important waterways in the country around Deniliquin most particular around Moonaculla Aboriginal Reserve and the Werei Forest.

- Edwards
- Wakool
- Neimur
- Tumugery
- Collegan
- Yellakool
- Reedy Creek
- Moonaculla Lagoon
- Box Creek
- Chinamans Hole
- Bunjip Hole

The Elders held particular knowledge regarding streams, runners and billabongs that no longer fill due to changes in the water regimes in through the country.

- Its our provider for life
- We are one with our country
- The river flows like blood through our veins
- Spiritual places of our dreaming
- Important for our future generations
- Place for our people to gather, camp, fish and hunt
- Social and Economic
- Cultural Places

## **What are the values that should be preserved?**

### Cultural Heritage Places

- Canoe trees
- Mounds
- Burials
- Middens/ ovens
- Werie Forest as a whole is a significant site to us
- Bunjip Holes

### Foods and Medicines most of which are no reduced/rare/extinct from area

- Turtles long and short neck
- Catfish
- Trout cod
- Mud tench
- Mussels
- Ducks/Swans/Eggs
- Black shags/chicks
- Mountain ducks
- Kangaroo grey & red
- Wallabies
- Platypus
- Echidnea
- Dingo's
- Bush turkey
- Old man weed - medicine
- Cumbungi – paste
- Reeds – baskets
- Wattle – medicine
- Wild honey – sugar bag
- Native cherries – fruits
- Quandongs – nuts and paste

## **What is a healthy river?**

- Life people, plants birds, fish and animals
- The flows should coincide with the breeding seasons at the right time of the year
- Regimes should go back to natural times - summer dry and winter floods
- Clean drinkable water
- Solid banks – stopping the wash caused by water regulated flows

## **How should the natural resources be used and what interests should be preserved?**

- Wise use of river resources
- Respectful of sustaining life not for wealth and gain but for the future
- Stop looking after the interests of the tourists and farmers and look after the rivers
- Return to dry land cropping
- Utilising lands as nature wanted not what man wants it to be.



- Preserving nature, flora, fauna, Indigenous peoples for future generations

### **What is wrong with the Waterways now?**

- Indigenous land and water management practises not being used ie: low burns
- Recreational sports ie: high speed boats
- Whitemans playground
- Erosion caused by hooved animals ie: cattle and sheep
- Feral animals ie: rabbits
- Feral fish ie: carp
- Lack of water in the right season
- Timber harvesting
- Apariaries
- Land Clearing
- Water quality
- Lack of low burning in the right seasons
- Erosion of banks due to water regulated flows

### **What are specific areas of cultural significance along the Murray and its tributaries?**

- All our country is important it is part of our creation and our heritage.
- Many were identified in question 1.

### **How should Indigenous traditional interests be recognised?**

- Respect, recognition, adoption and implementation of specific policy for Indigenous inclusion for natural resources in their traditional country.
- Recognition that past and present government policy and practises have and continue to have an effect on Indigenous peoples.
- Kinship connections to the country be recognised and provided for within policy.
- Compensation both monetary and non monetary/ royalties to be available to Indigenous peoples in for loss of access to natural resources due to their degradation and decline.
- Acknowledgement for the spiritual and cultural continuity of Indigenous peoples to their land and waters
- Dual naming to reflect both past and present Indigenous names for rivers, streams significant places even bends of rivers. To include the stories that go with the name of each river or site.

### **Recovery of water how much?**

There was discussion on the amount of water that would need to be returned to the river system. The recommendation that at least 10,000gig be returned back to the river system each year.

## **4.6 Wiradjuri Nation**

Albury on 20<sup>th</sup> December 2002

**NOTE: Wiradjuri representatives were from Tumut, Griffith, Wagga and Albury**

**What is the significance of the Murray River & its tributaries to the Wiradjuri people?**

- The river is our life of creation our maker being Biaimi
- The land and rivers and the people are one
- Without a healthy river the people will not be healthy
- Responsibility, or duty of care
- We look after the river and the river looks after us
- Water is life, life is water
- Significance to our economy, the resources
- Hunting and gathering rights
- Provides for the Australian economy
- Trading Routes
- Traditional resources are provided by land and waters
  - Tool
  - Fish
  - Stones
  - Ochre
- Trading Information

**What are the values of the river that should be preserved?**

- Indigenous name for the river should be preserved
- Wiradjuri name for the Murray river “Milliwa” be used
- Its life, biodiversity, balance
- Language names
- Ceremony it creates a focal point for cultural and social values
- Creates gathering places
- Recognition of traditional owners
  - laws and customs
  - rights
- Traditional Knowledge
- Significant places
  - Burial
  - Middens

## **What is a Healthy River?**

- Living river
- No restrictions i.e.: weirs
- Reproducing life
- Proper water regimes
  - dry in summer Dec-Feb
  - wet in winter June – Nov
  - 12nth watering cycles for wetlands/billabongs
  - 7 year water cycles for large floods to cover flood plains
- Clean, no silt
- Slow erosion, stop trees falling into river
- Balance
- Fresh luses/flows to clear water ways
- No carp
- No willows
- All non indigenous species should be removed
- Traditional flows non regulation

## **How should the river resources be used?**

- Term traditional or natural is the same thing
- Restore ecosystems and biodiversity
  - fish
  - animals
  - flora
- Maintain the health of the river without that we have nothing
- Without imposition by mankind
- Potable water/ drinkable to sustain life in our communities
- Sustainable economic use of resources
- Recognition of traditional owners rights

## **What interests should be recognised?**

- Recognition of traditional peoples of the river includes our laws, customs and traditions
- Recognition of Indigenous interests of all communities reliant on rights
- Balance of interests
- Equity for all
- Traditional peoples recognition based as right as first peoples
- The rights to maintain identity as first peoples and traditional owners

## **What's wrong with the River Murray now?**

- Blocked
- Dying
- Over use of resources
- Drowning river
- Not allowing for drying out of banks
- Not balanced by the seasons
- Mis management of natural cycles
- Too much control, too many weirs and regulators and dams
- Rubbish in the system is blocking the flows

## **What specific areas of cultural significance along the river?**

- This knowledge belongs to the Wiradjuri people
- Rather than identify specific sites the Wiradjuri should be engaged to identify significant places along the river

## **How should Wiradjuri's interests be recognised?**

- Recognition of Wiradjuri as the traditional owners of their traditional land and waters
- By recognising our interests as custodians of the lands and waters
- Wiradjuri Elders be recognised as the voice/speakers for their country and their people
- To adequately resource the traditional owners to participate equally
- Indigenous peoples should be compensated based on traditional rights to economic sustainability

## **What is Wiradjuri's vision for the Milliwa and Murrumbidgee?**

- To be we are recognised and respected for what and who we are
- That our rivers and tributaries are respected and cared for
- That every traditional owners/nation be recognised in their own country
- To be respected for what and who they

## **Special considerations**

- The river should be the first priority
- Equitable distribution of water only after environmental flows have been secured
- Restoring maximum amount of water back to the environment
- Compensation to be provided for reduction of water allocation to farmers based on existing use

## **4.7 Yorta Yorta Nation**

**Barmah 24th December 2002**

### **Vision**

Recognition of Yorta Yorta peoples connection to their land and waters. The river back to natural flows, able to see the bottom, natural floods during breeding seasons.

### **What is the significance of the Murray River & its tributaries to the Indigenous people?**

- We are part of the creation story of the river
- Our beliefs entwined in the river itself
- Provider of food of life
- River and land is us Yorta Yorta people
- Gives life is central part of life

### **What are the values of the river that should be preserved?**

- life to our environment trees, birds, animals insects and water life be maintained
- Plants and medicines and food
- Cultural sites and places

### **What is a healthy river?**

- River flows at natural seasons of the year
- Clean, clear water
- Return of vegetation, mussel
- Less regulators

### **How should the river resources be used?**

- Rivers should be more important to any other interest
- Barmah Choke be recognised as a natural constraint it aids the quality and quantity of water
- Prevention of fish kills through mismanagement

### **What's wrong with the River Murray now?**

- Too much lost already
- Quality should be returned to how is was quality preserved
- Land clearing impacts on climate

- Management having impacts on fish
- Evaporation in storage's
- Impacts of particular crops i.e.: rice and grapes effecting river health
- River is twice as wide as it use to be. Was able to walk across in the summer
- Barmah Millewa management plan was drawn up without reference to the environment or a cultural heritage focus
- Too much emphasis on mechanical regulators
- Not just restricted to people along the river i.e.; farmers. It is about a broader national community
- Power boat racing at Echuca causing erosion
- Use of regulators to stop flooding
- To much emphasis on monetary do we need present levels of exports

### **What places are of cultural significance?**

- All along the River as it is part of creation
- Every bend of the river is significant to Yorta Yorta
- Sites on the bends show where our peoples camp evidence of sites
- Sites are found from the river banks to floodplains to sandhills

### **How should Indigenous traditional owner's interests be recognised?**

- Specific recognition of the MLDRIN Memorandum of Understanding
- Indigenous peoples need access to resources and technical advice
- Policy needs to be equitable to allow for Indigenous interests not just farmers
- Enough water available after environmental allocation for social and economic outcomes for Indigenous peoples

### **Special considerations**

- An environmental levy should be paid by users of the rivers water
- Government should not have to buy water for the environment
- Limits should be made on what is grown
- How much do we want to make from the country this should be balanced to the lands sustainability
- If farmers are to be paid compensation then so should townspeople and other parts of community
- Indigenous peoples should be compensated for loss of access to traditional resources
- Environmental flows should be enough to allow flow through the Murray mouth

# ***MEMORANDUM OF UNDERSTANDING***

**Between**

**MURRAY LOWER DARLING RIVERS INDIGENOUS NATIONS**

**and**

**MURRAY-DARLING BASIN COMMISSION**

**In respect of**

**a framework for the participation of the MURRAY LOWER DARLING RIVERS INDIGENOUS NATIONS in the management of the natural resources of the Murray and Darling River valleys below the Menindee Lakes Storage**

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## MEMORANDUM OF UNDERSTANDING

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**MEMORANDUM OF UNDERSTANDING** made the twenty third day of March 2006,  
between:

**MURRAY LOWER DARLING RIVERS INDIGENOUS NATIONS ("MLDRIN")**  
for the Indigenous nations, represented by those whose names and signatures appear in the  
signature block at the end of this Memorandum;

and

**MURRAY-DARLING BASIN COMMISSION ("the Commission")**  
of 15 Moore Street, Canberra in the Australian Capital Territory,

and to be known as the Parties.

### 1 RECITALS

#### MLDRIN

- 1.1 MLDRIN is a confederation of traditional owner groups, each with responsibilities unique to their territory in the Murray and Darling River valleys and that are recognised under traditional laws and customs as having a spiritual, cultural and physical connection and responsibility for caring for homelands within their traditional boundaries.
- 1.2 MLDRIN is formed for the purposes of, amongst other things:
  - 1.2.1 expressing to the Commission, State agencies and other bodies the views and the perspectives of the Indigenous nations; and
  - 1.2.2 providing for the involvement of the Indigenous nations,in respect of the management of natural resources in the Murray and Darling River valleys.
- 1.3 MLDRIN carries out the purposes referred to in clause 1.2 by:
  - 1.3.1 creating a forum for the Indigenous nations to express views in respect of natural resource management;
  - 1.3.2 providing a united base, which strives to ensure equity, access to, and participation in the processes of natural resources management; and
  - 1.3.3 coordinating the expression of views referred to in this clause.

#### The Commission

- 1.4 The Commission is an inter-governmental body set up under the Murray-Darling Basin Agreement dated 24th June 1992. The purpose of the Murray-Darling Basin



Agreement is to promote and coordinate effective planning and management for the equitable, efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin.

- 1.5 The Murray-Darling Basin Ministerial Council through the Commission:
- 1.5.1 manages the waters of the River Murray and Darling River below the Menindee Lakes Storage;
  - 1.5.2 advises on policies and programs for the management of the Murray-Darling Basin's environmental resources; and
  - 1.5.3 oversees the implementation of policies and programs aimed to help achieve sustainable environmental resource use.

## **2 DEFINITIONS**

- 2.1 For the purposes of this Memorandum:
- 2.1.1 'Indigenous nations' means the traditional owner groups who are Parties to this Memorandum of Understanding referred to in Clause 1.1; and
  - 2.1.2 'natural resources' means the water, land and other environmental resources managed by the Commission as referred to in clauses 1.4 and 1.5, consistent with the Murray-Darling Basin Ministerial Council's Integrated Catchment Management Policy as in force from time to time; and
  - 2.1.3 'confederation' means an alliance of traditional owner groups for a common purpose; and
  - 2.1.4 'cultural heritage' means a place or object that is of significance to Indigenous persons in accordance with their practices, observances, customs, traditions, beliefs, folklore or history.

## **3 OTHER ARRANGEMENTS OR AGREEMENTS**

- 3.1 This Memorandum:
- 3.1.1 does not supersede or preclude other arrangements or agreements; and
  - 3.1.2 recognises the existence of the Murray Lower Darling Rivers Indigenous Nations Memorandum of Understanding with the New South Wales Department of Land and Water Conservation dated 14<sup>th</sup> October 2001.

## **4 PURPOSE OF THIS MEMORANDUM**

- 4.1 The Parties wish to:
- 4.1.1 recognise in a positive, respectful and cooperative fashion that their activities comprise many shared interests and that their aspirations for natural resource management in the Murray and Darling River valleys have many shared goals;
  - 4.1.2 establish a realistic framework for collaboration in the natural resource management of the Murray and Darling River valleys;

- 4.1.3 develop a transparent process of dialogue with, and further promote the meaningful involvement and engagement of, the Indigenous nations in the natural resource management of the Murray and Darling River valleys;
- 4.1.4 ensure that the traditions of the Indigenous nations are incorporated into natural resource management policy development and implementation; and
- 4.1.5 create mechanisms and processes by which the purposes of this Memorandum might be achieved.

## **5 ESTABLISHMENT OF RELATIONSHIP**

### **Nature of Relationship**

- 5.1 The Parties agree that by this Memorandum of Understanding they establish a cooperative relationship, to help ensure that the natural resources of the Murray and Darling River valleys are managed in a manner which recognises and assures that the 'efficient and sustainable' use of those resources carries benefits to the Indigenous nations in relation to their cultural heritage, including without limitation, their spiritual, social, customary and economic values for the use of land and water.

### **Acknowledgement of status of MLDRIN**

- 5.2 The Parties acknowledge and agree that:
  - 5.2.1 communication on the Indigenous nations' views and perspectives on natural resource management issues is best coordinated through MLDRIN, without the exclusion of other interested Indigenous groups; and
  - 5.2.2 traditional methods and processes are the most effective means of communications with the Indigenous nations and should be respected by all Parties.

## **6 MECHANISMS TO PROMOTE OBJECTIVES**

### **Representatives to work together**

- 6.1 The Parties agree that their representatives will work together in such manner as they may agree, in order to exchange experience and information for the purpose of advancing the cooperative arrangements referred to in clause 0.

### **The Commission's responsibilities**

- 6.2 The Commission shall use the process established in this Memorandum as a model for consultation about issues relevant to it in relation to its responsibilities under the Murray-Darling Basin Agreement 1992 by providing:
  - 6.2.1 a forum to enable the Indigenous nations to present and discuss issues in relation to natural resource management in the Murray and Darling River valleys below the Menindee Lakes storage, with respect to the Commission's activities;

- 6.2.2 to MLDRIN and the Indigenous nations appropriate resources agreed by both Parties to undertake the roles referred to in this Memorandum;
- 6.2.3 access to relevant information, expertise and data, as agreed by both Parties, that MLDRIN and the Indigenous nations may reasonably require with respect to natural resource management in the Murray and Darling River valleys below the Menindee Lakes storage which, in content and format, is useable by MLDRIN and the Indigenous nations for the purposes of this Memorandum.

### **MLDRIN's responsibilities**

- 6.3 MLDRIN shall:
  - 6.3.1 promote the participation of the Indigenous nations along the Murray and Darling River valleys below the Menindee Lakes storage in the model processes referred to in this Memorandum;
  - 6.3.2 facilitate cooperation and coordination between the Indigenous nations and Government in achieving the obligations of the Commission and policy and legal commitments of Governments and their agents in respect of the protection of natural resources and cultural heritage;
  - 6.3.3 promote issues of common concern to the Indigenous nations;
  - 6.3.4 establish processes for interaction between the Commission and the Indigenous nations, which respect traditional methods/processes of communication.

### **Development of General Frameworks and Processes**

- 6.4 The Parties will develop agreed general frameworks and processes to enable each of the Indigenous nations to reach understandings and agreements with the Commission on all issues of common concern in order to facilitate the resourcing of activities consistent with this Memorandum, including, but not limited to:
  - 6.4.1 representation, participation and engagement in the process of natural resource management;
  - 6.4.2 cultural heritage;
  - 6.4.3 social and economic outcomes; and
  - 6.4.4 identifying and agreeing activities of mutual interest, incorporating:
    - a) what action is required;
    - b) what resourcing is required;
    - c) what is to be delivered; and
    - d) how progress will be monitored, reviewed and evaluated.

## **7 DISPUTE RESOLUTION**

### **Notification**

- 7.1 If a dispute arises between the Parties relating to this Memorandum, the party claiming the dispute agrees to notify the other party to the dispute in a timely manner giving details of the dispute.

### **Consultation**

- 7.2 The parties to a dispute agree to use their best endeavours to resolve the dispute through direct consultation and negotiation between each parties nominated representatives.

### **Good faith**

- 7.3 Each party to a dispute agrees that all consultation and negotiations are to be conducted in good faith and in a respectful, cooperative and timely manner in accordance with the principles and framework specified in this Memorandum.

## **8 LIABILITY FOR LOSS OR DAMAGE**

- 8.1 No Party has an obligation or liability to the others under this Memorandum for loss or damage suffered as a result of participating in the processes and activities described in this Memorandum.

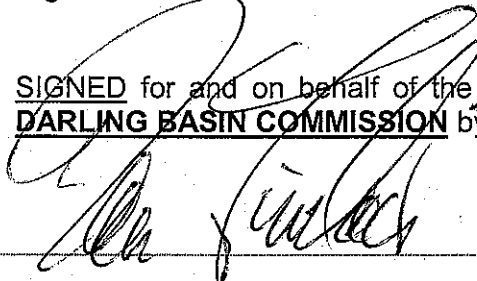
## **9 TERM OF MEMORANDUM AND EFFECT**

- 9.1 This Memorandum:

- 9.1.1 may be amended at the request in writing of any Party, with the agreement in writing of the other Parties;
- 9.1.2 will be reviewed after a period of three years from the date of signing, and be renewed subject to agreement by both Parties;
- 9.1.3 is non-exclusive of any other association relationship or agreement which any of the Parties may at any time wish to enter and is not intended to and does not create any legally binding obligations or enforceable rights;
- 9.1.4 is not intended to and does not affect any legal or political rights and interests of any Party to this Memorandum of Understanding; and
- 9.1.5 is not a treaty.

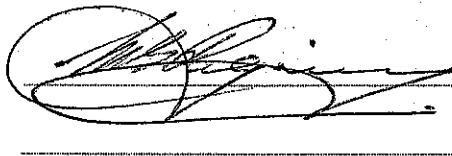
Signed as a Memorandum of Understanding

SIGNED for and on behalf of the MURRAY-DARLING BASIN COMMISSION by:

  
\_\_\_\_\_

Signature

The Right Honourable Ian Sinclair AC,  
President, Murray-Darling Basin  
Commission


  
\_\_\_\_\_

Witness

Name of Witness (Print)

SIGNED for and on behalf of  
MURRAY LOWER DARLING RIVERS INDIGENOUS NATIONS  
by the authorised representatives of the Indigenous nations, as follows:


SIGNED for and on behalf of the YORTA  
YORTA PEOPLES:

  
\_\_\_\_\_

Signature

  
\_\_\_\_\_


Name(Print)

  
\_\_\_\_\_

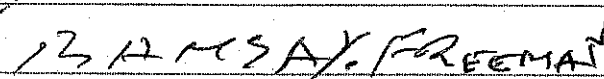
Witness

Name of Witness (Print)

SIGNED for and on behalf of the WIRADJURI  
PEOPLES:

  
\_\_\_\_\_

Signature

  
\_\_\_\_\_

Name(Print)

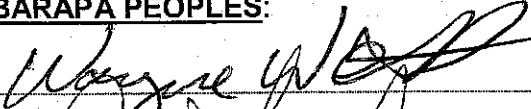
  
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Witness

  
\_\_\_\_\_

Name of Witness (Print)

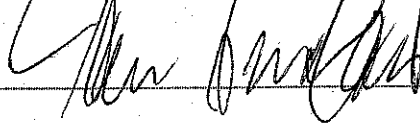
SIGNED for and on behalf of the BARAPA  
BARAPA PEOPLES:



Signature

WAYNE WEBSTER

Name(Print)



Witness

Name of Witness (Print)

SIGNED for and on behalf of the WAMBA  
WAMBA PEOPLES:

T. Hamilton

Signature

Tracy Hamilton

Name(Print)

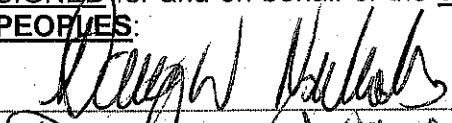


Witness

Kenneth STUART

Name of Witness (Print)

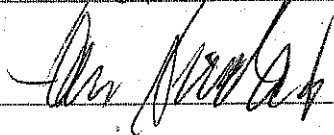
SIGNED for and on behalf of the WADI WADI  
PEOPLES:



Signature

DOUG NICHOLS

Name(Print)



Witness

Name of Witness (Print)

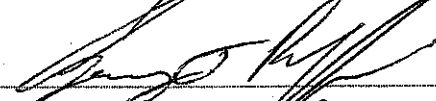
SIGNED for and on behalf of the MUTHI  
MUTHI PEOPLES:



Signature

MARY PAPPIN

Name(Print)



Witness

Cosy J Pappin

Name of Witness (Print)

**SIGNED** for and on behalf of the **LATJI LATJI PEOPLES:**

*Ralph Harradine*

Signature

RALPH HARRADINE

Name(Print)

*Stanley Harradine*

Witness

STANLEY HARRADINE

Name of Witness (Print)

**SIGNED** for and on behalf of the **WERAGAIA PEOPLES:**

*Peter J. Mertikos Jr.*

Signature

PETER J. MERTIKOS JR

Name(Print)

*Stanley Harradine*

Witness

Name of Witness (Print)

**SIGNED** for and on behalf of the **TAUNGURUNG PEOPLES**

*Crest S. Jones*

Signature

*Crest S. Jones*

Name(Print)

*Stanley Harradine*

Witness

Name of Witness (Print)

**SIGNED** for and on behalf of the **NGARRINDJERI PEOPLES:**

*Stanley Harradine*

Signature

*Stanley Harradine*

Name(Print)

*Stanley Harradine*

Witness

Name of Witness (Print)